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CASES

OF

CONTROVERTED ELECTIONS

IN THE

ELEVENTH PARLIAMENT

OF THE

UNITED KINGDOM;

BEING THE FIRST PARLIAMENT SINCE THE PASSING OF
ACTS FOR THE AMENDMENT
OF THE REPRESENTATION OF THE PEOPLE.

BY HENRY JAMES PERRY, ESQ. M.A.

AND

JEROME WILLIAM KNAPP, ESQ. D.C.L.

BARRISTERS AT LAW.

LONDON:

J. & W. T. CLARKE,

LAW BOOKSELLERS AND PUBLISHERS,

PORTUGAL-STREET, LINCOLN'S-INN.

1833.

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H. J. PERRY.
J. W. KNAPP.

Lincoln's-Inn,
15th April, 1833.

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Liverpool case	MSS. 1813	550.
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Locke, Mayhew v.	2 Marsh, 377	20.
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Longe's (Thomas) case	Cited 2 Peck. 246	416.
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Ludgershall case	1 Peck. 380	92 n.
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Macclesfield, Rex v.	2 B. & Adol. 870	208.
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Moreley, Rex v.	2 Burr. 1041	82.
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Morpeth case	35 Journ. 83; 1 Dougl. 147	339 n.
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North Collingham, Rex v.	1 B. & C. 578	5, 6, 208.
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Rex v. Mayor of Norwich	1 B. & Adol. 310	371.
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Rex v. Mitchell	10 East, 520	16.
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Rex v. Newnham	Burr. S. C. 756	5, 6.
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Rex v. Player	2 B. & A. 707	489.
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U.		
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Wigan case	36 Journ. 273	487 n.
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Wilson, Wagstaff *v.*	4 B. & Adol. 339	578 n.
Winchester case	10 Journ. 447	146.
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Worcester case	3 Dougl. 263, 261, 275, 277	169 n. 352 n. 353 n. 374, 556.
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Wootton Basset case	MSS. 1819, 1820	153, 241 n.
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Z.

Zouch *v.* Bamfield	1 Leon. 82	198.

ADDENDA AND ERRATA.

P. 28, line 14, *for* " the land," *read* " it."

P. 73, note (*m*), *for* " 86 Journals," *read* " 87 Journals, p. 156."

P. 95, line 42 of note, *for* " an inferior," *read* " a superior."

Ibid. line 55, *for* " Bedfordshire," *read* " Bedford."

P. 112, line 21, *for* " the sitting members," *read* " Mr. Crawley."

P. 134, line 23, *after* " prove," *add* " it."

Add as a note to p. 158, line 24, " May 8th, 1833: On the motion of Sir John Byng, it was resolved, That an humble address be presented to His Majesty, that he will be graciously pleased to give directions to the Attorney-general for Ireland to prosecute James Lisle for bribery and corrupt practices during the late election for the borough of Newry."

P. 159, lines 21, 24, *for* " 1 Dougl." *read* " 3 Dougl."

Ibid. line 37, *for* " 1 Peck." *read* " 2 Peck."

P. 233, line 2, *after* " was," *dele* " not."

P. 258, line 9 of note, *for* " sect. 59," *read* " sect. 50."

P. 316, note (*s*), *for* " Somers' Tracts, 279," *read* " 1 Somers' Tracts, 379."

P. 327, note (*d*), *for* " 2 Peck." *read* " 1 Peck."

P. 361, note (*d*), line 1, *for* " a county a city," *read* " a city a county."

P. 364, line 4, the reference to the Seaford case is " 3 Lud. 3."

P. 422, line 19, note (*a*), the page referred to is 473.

P. 466, line 7, note (*s*), *for* " 1 Peck. 294," *read* " 1 Peck. Introd. xxi."

P. 497, line 27, *for* " 1827," *read* " 1727."

P. 558, line 29, *dele* " that."

Add as a note to p. 530, line 24, " Mr. Baron Pennefather's decision is opposed to that of the twelve Judges of Ireland on a case since reserved for their opinion by a Judge of Assize."

During the progress of this Number through the press, some points have been decided, the early communication of which may be acceptable to the Profession: they are, with that view, shortly stated below.

In the *Longford case*, it was resolved (22d March): "That the Committee had the power to examine into the validity of the votes standing upon the register." And, on the 26th March: "That the right to vote for a freehold or leasehold is in such freeholder or leaseholder, when the property for which he claims shall be of the yearly value of 10 *l.*, and shall actually yield or be capable of yielding that value to the claimant, after deducting the rents and charges payable out of the same, except only public or parliamentary taxes, and the other exceptions mentioned in the 10th section of the 2 & 3 Will. IV. c. 88."

The Ripon Committee (28th March) permitted a vote to be questioned, though the notice of objection did not contain the place of abode of the objector, it being their opinion that "inasmuch as the vote, notwithstanding this omission in the notice of objection, did actually become matter of discussion before the revising barrister, this circumstance sufficed to bring it within their jurisdiction, without determining whether the notice of objection on which the overseer or barrister acted was or not in perfect form."

Preliminary objections to the hearing of the Montgomery and Carrickfergus petitions have been overruled. The first of these did not state the petitioners to have had a right to vote at the election petitioned against: the other contained that statement and also stated that the petitioners (with one exception) did vote, but it was insisted that the 9 Geo. IV. c. 22. s. 4. must have intended the statement required by it to be made *bonâ fide*, and evidence was offered to show that all the petitioners resided more than seven miles from Carrickfergus.

The Norwich and Hertford Committees have come to opposite decisions on the subject of agency; the former requiring it to be proved before evidence given of acts; the latter admitting previous proof of acts and declarations.

The Southampton and Portarlington Committees have determined, that petitions may be received, notwithstanding the introduction of fresh allegations after the signature of the petition, but that the allegations so introduced are not to be proceeded upon.

ERRATUM:

In the *Oxford case*, p. 95, line 42 of note, *for* "an inferior," *read* "a superior."

INTRODUCTION.

THE great changes which have been made in our Constitution by the Reform Acts, and the differences of opinion which have occurred on the construction of many parts of them, having rendered it probable that the decisions of the Revising Barristers would in numerous instances be brought under the review of the House of Commons, the Reporters were induced, early in November last, to make arrangements for publishing, from time to time, such cases of interest to the members of their own Profession, and to Electors at large, as might be presented for the decision of Committees of the House.

The Reporters have collected together the principal points on the English Reform Act, which have occurred to their friends and themselves on their Circuits as Revising Barristers; and they have published them with the hope that the authorities which they have cited upon them may be useful to the Profession, either before Committees of the House of Commons, or on Circuits of Revision. They do not profess to give any opinion of their own upon these points. Many, no doubt, will be decided by the general concurrence of the Bar without having recourse to the judgment of a Committee; while on others a difference of opinion will continue to exist, until they shall be settled by a reference to that tribunal: but until that period has

arrived, it may be beneficial to the lawyer to know and consider well the doubts which have arisen on our new Constitutional Charter.

In some cases it has been found necessary to give the sections of the Act at length. The first on which serious doubts have arisen is the 18th, which is in these terms:

§ 18. "And be it enacted, that no person shall be entitled to vote in the election of a Knight or Knights of the Shire to serve in any future Parliament, or in the election of a Member or Members to serve in any future Parliament for any city or town, being a county of itself, in respect of any freehold lands or tenements whereof such person may be seised for his own life, or for the life of another, or for any lives whatsoever, *except such person shall be in the actual and bonâ fide occupation of such lands or tenements*, or except the same shall have come to such person by marriage, marriage settlement, devise, or promotion to any benefice or to any office, or except the same shall be of the clear yearly value of not less than ten pounds above all rents and charges out of or in respect of the same, any statute or usage to the contrary notwithstanding: Provided always, that nothing in this Act contained shall prevent any person now seised for his own life or the life of another, or for any lives whatsoever, of any freehold lands or tenements, in respect of which he now has, or *but for the passing of this Act might acquire* the right of voting in such respective elections, from retaining or acquiring, so long as he shall be so seised of the same lands or tenements, such right of voting in respect thereof, if duly registered according to the respective provisions hereinafter contained."

Upon this section the following questions have been raised: 1st. Whether the "tenements" must necessarily be of such a nature as to be capable of occupation, even though acquired by marriage, marriage settlement,

&c., or though of the clear annual value of 10*l.*? as, for instance, whether a rent-charge for life of 10*l.* a year, granted subsequently to the 7th of June 1832, would entitle its possessor to be registered?

The argument urged in favour of the affirmative of this proposition is one by analogy to the decisions on the 17th section of the Statute of Frauds. By that section it is enacted, "That no contract for the sale of any goods, wares and merchandizes, for the price of 10*l.* sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised."

Upon this section it has been held (*a*) that the subject-matter of the contract must be capable of acceptance and delivery, notwithstanding the alternatives presented by the subsequent part of the clause; and it is therefore contended, that in like manner "the tenements" in this section of the Reform Act, whatever be the mode of acquiring them, or of whatever annual value they may be, must be capable of "occupation," which it is contended that a rent-charge is not (*b*).

The argument on the other side is founded upon the alleged intention of the Act, collected from the wording of the above section, that in future (subject, however, to the exceptions and proviso contained in it) no owner of a life annuity shall vote unless the annuity be of the annual value of 10*l.*

(*a*) *Towns* v. *Osborn*, 1 Strange, 506; *Clayton* v. *Andrews*, 4 Burr. 2101; *Groves* v. *Buck*, 3 M. & S. 178.

(*b*) *Holden* v. *Smallbrooke*, Vaughan, 191. See, however, on questions of settlement gained by renting incorporeal hereditaments, the cases of *Rex* v. *Piddle-Trenthide*, 3 T. R. 772; *Rex* v. *Chipping Norton*, 5 East, 239: *Rex* v. *Bubwith*, 1 M. & S. 514.

2dly. Whether annuities need now be registered with the clerk of the peace, according to the provisions of the 3 Geo. 3, c. 24?

This question is one of considerable importance, and has been the subject of much difference of opinion in the profession. The 3rd Geo. 3rd, c. 24, requires that every person who claims to vote in respect of an annuity, shall have registered himself as owner of it "twelve calendar months at least before the first day of election." The framers of the Reform Act seem to have intended the 31st day of July in every year to be substituted for the day of election, as it is the day on which the title to vote is to be complete. See sec. 42. It has been provided, too, by the 75th section, that "all laws, statutes and usages," now in force respecting the election of Members to serve in Parliament, "shall remain in full force," except so far as any of the said "laws, statutes or usages are repealed or *altered* by this Act, or *are inconsistent with the provisions thereof.*"

The 26th section (see *post.*, p. 7) provides that a period "of possession, or receipt of the rents and profits," of *six calendar months previous to the 31st day of July*, "shall be sufficient, any statute to the contrary notwithstanding."

The ground taken on the one side is, that "there is nothing in the Reform Act which dispenses with the necessity of this registration" (*c*). On the other side it is urged, by those who maintain that registration with the clerk of the peace is no longer necessary, that to require it would in many cases lead to this "inconsistency," in the sense of the 75th section, that a man ought to register himself as owner of an annuity some months before the commencement of the period of possession required by the 26th section. A further argument is also founded on the preamble of the 3 Geo. 3, which recites the object of the Act to have been to pre-

(*c*) *See* Rogers on the Reform Act, 22.

vent the fraudulent practices to which rent-charges, being of a private nature, were liable. That object the advocates of the view now under consideration assert to have been fully attained by the registration clauses of the Reform Act, the publicity attendant on the requisite notices being as complete (not to say more) as that provided for by the old law.

Upon the 20th section, which confers the right of voting on leaseholders and occupiers of lands, several questions have been raised:

1st. Whether the lessee or assignee of several terms, originally of sixty years, in premises together of the annual value of 10 *l.*, or of several terms originally of twenty years, in premises together of the annual value of 50 *l.*, is entitled to be registered as a county voter?

2dly. Whether the occupier, under several holdings, of lands at rents amounting together to 50 *l.* is entitled to be registered?

The question here raised is similar to those which have arisen on the settlement of paupers under the 59 Geo. 3, c. 50. That Act provides that no person shall acquire a settlement by reason of dwelling for forty days in any tenement rented by such person, "unless such tenement shall consist of a house or building within such parish or township, or of land within such parish or township, or of both, *bonâ fide* hired by such person at and for the sum of 10 *l.* a year, at least, for the term of one whole year, nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid for the term of one whole year at least, by the person hiring the same." It has been decided that, though the holdings are different, the pauper was entitled to a settlement (*d*).

(*d*) See *Rex* v. *North Collingham*, 1 B. & C. 578; See also, before the statute, *North Nibley* v. *Wootton-under-Edge*, 2 Bott, 115; and *Rex* v. *Bowling*, Burr. S. C. 177; *Rex* v. *Newnham*, Burr. S. C. 756; *Rex* v. *Sandwich*, Burr. S. C. 44.

3dly. Whether, if an occupant of a farm at a *bonâ fide* rent of 50 *l.* lets off a portion, he still retains his title to be registered? or whether such an occupation would give him the right of voting as would, previously to the passing of the 59 Geo. 3rd, c. 50, have entitled him to a settlement in the parish as an occupier or person coming to settle upon a tenement of the yearly value of more than 10 *l.*, under the 13 & 14 Car. 2, c. 12 (*e*).

4thly. Whether, if a tenant underlets only a small portion of the property demised, and remains in possession of what is evidently worth more than 50 *l.* per annum, he is entitled to a vote? As for instance, where the tenant holds land at a rent of 54 *l.* per annum, and lets off a part at a rent of 4 *l.*?

5thly. Whether two or more tenants of a farm, liable jointly and severally to the payment of a rent of 50 *l.*, are each of them entitled to be registered, or whether the amount of rent must be divided by the number of tenants, so that two joint-tenants cannot vote for a farm of less rent than 100 *l.* per annum, three for a rent of 150 *l.* per annum, and so on?

6thly. Whether a partner with a tenant, at a rent of 100 *l.* a year, who occupies the premises jointly with the tenant, and allows him 50 *l.* annually in the partnership accounts, but is not liable *to the landlord* for the rent, is entitled to be registered (*f*)?

Another question of some difficulty arises upon the words "above all rents and charges," which is also applicable to the same words in the 18th section. A very large portion of the property belonging to the Church is let on long leases for years determinable upon lives;

(*e*) See *Rex* v. *Northop*, Burr. S. C. 541; *Rex* v. *Sandwich*, Burr. S. C. 44; *Rex* v. *Fillingley*, 1 T. R. 460; *Rex* v. *South Benfleet*, 1 M. & S. 154. See also, since 59 Geo. 3, c. 50, *Rex* v. *North Collingham*, 1 B. & C. 578; *Rex* v. *Tunbridge*, 6 B. & C. 88; *Rex* v. *Great Bolton*, 8 B. & C. 91.

(*f*) See *Rex* v. *Dunne Tew*, Burr. S. C. 398; *Rex* v. *Newnham*, ibid, 176; *Rex* v. *Tunbridge*, 6 B. & C. 91.

and it is doubtful whether the fines usually paid on the renewal of those lives are to be counted amongst the rents and charges above which the property must be of the value of 10 *l.* or 50 *l.* to entitle the holder to vote; and if so, in what manner the amount of the fine is to be deducted from the annual value?

§ 23. "And be it enacted, that no person shall be allowed to have any vote in the election of a Knight or Knights of the Shire, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate, but that the mortgagor, or *cestui qui* trust in possession shall and may vote for the same estate notwithstanding such mortgage or trust."

§ 26. "And be it enacted, that notwithstanding anything hereinbefore contained, no person shall be entitled to vote in the election of a Knight or Knights of the Shire to serve in any future Parliament, unless he shall have been duly registered according to the provisions hereinafter contained; and that no person shall be so registered in any year in respect of his estate or interest in any lands or tenements as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof, *for his own use*, for six calendar months at least next previous to the last day of July in such year, which said period of six calendar months shall be sufficient, any statute to the contrary notwithstanding; and that no person shall be so registered in any year, in respect of any lands or tenements held by him as such lessee or assignee, or as such occupier and tenant as aforesaid, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof, *for his own use*, as the case may require, for twelve calendar months next previous to the last day of July in such year: Provided always, that where any lands or tenements which would

otherwise entitle the owner, holder or occupier thereof to vote in any such election, shall come to any person, at any time within such respective periods of six or twelve calendar months, by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to any office, such person shall be entitled in respect thereof to have his name inserted as a voter in the election of a Knight or Knights of the Shire in the lists then next to be made by virtue of this Act as hereinafter mentioned, and, upon his being duly registered according to the provisions hereinafter contained, to vote in such election."

Upon the above two sections taken together, it is believed that the only question which has arisen is, whether trustees, not having any beneficial interest, but who have been in possession or in the receipt of the rents and profits for six calendar months previously to the 31st of July in the year of registration, are entitled to be registered?

The first of these sections is copied verbatim from the 7th section of the 7 & 8 Will. 3, c. 25, with the exception of the words "vote in the election of a Knight or Knights of the Shire," which in the statute of Will. 3, are supplied by the words "vote in the election of Members to serve in Parliament," which latter words rendered the clause applicable also to cities and boroughs where freeholders are entitled to vote.

The statute of 10 Hen. 6, c. 7, contains a special proviso, "that he which cannot expend 40 *s.* by the year as aforesaid, shall in no wise be chooser of Knights for the Parliament;" and the same possession and receipt of the rents for the voter's *own use*, but for the period of twelve instead of six calendar months, were formerly requisite by the 18 Geo. 2, c. 18, s. 9, as are now by the present Act; and the freeholder's oath, which that statute authorized any of the candidates or persons entitled to vote to require of the freeholder previously to

his tendering his vote, was to that effect. It has been, however, insisted (*g*), that the practice under the old law has been for trustees to vote, although not possessed of any beneficial interest in their freeholds, and this proposition appears to receive some degree of support from the decisions of the committees in the cases of *Downton* (*h*) and *East Grinstead* (*i*). In the course of the debate in the committee upon this clause, it was declared by Lord John Russell and the Solicitor-general (Sir W. Horne), to be the intention of the framers of the Act to leave the law respecting trustees and mortgagees as it had been formerly (*k*).

§ 24. "And be it enacted, that notwithstanding anything hereinbefore contained, no person shall be entitled to vote in the election of a Knight or Knights of the Shire to serve in any future Parliament in respect of his estate or interest as a freeholder in any house, warehouse, counting-house, shop or other building [occupied by himself], or in any land occupied [by himself], together with any house, warehouse, counting-house, shop or other building, being either separately, or jointly with the land so occupied therewith, *of such value* as would, *according to the provisions hereinafter contained*, confer on him (*) the right of voting for any city or borough, whether he (*) shall or shall not have actually acquired the right to vote for such city or borough in respect thereof."

§ 25. Is a similar clause, applying to copyholders, customary tenants, tenants in ancient demesne, holding by copy of court-roll, lessees or assignees, tenants and occupiers, deriving their right to vote for counties under the 20th section, except that the words above placed within brackets do not occur, and that after the asterisk

(*g*) Mirror of Parliament, vol. i. 1832, p. 428.

(*h*) *Thomas Wornell's case*, 1 Luders, pp. 147—167.

(*i*) 1 Peckwell, 325, and vide *ibid*, 320.

(*k*) Mirror of Parliament, vol. i. 1832, p. 428.

the words "or any other person" are in each case inserted. On the first of these sections has arisen a question, affecting the right of voting for counties of persons in the occupation of their own freeholds, not situate within the city or borough, of the value of 10 *l.* a year or upwards, which has, however, been invariably decided in favour of the franchise.

It is contended, that *the value* is of itself the ground for disfranchising the occupying freeholder, there being no words to fix the situation of the freehold as "within a city or borough, or within any place sharing in the election for a city or borough," and that to adopt any other construction it would be necessary to distort the wording of the section in question to an extent not hitherto admitted in any rule of legal interpretation. On the other hand it has been argued, that regard being had to the rules of construction, "that where words bear a very absurd signification, if literally understood, we must a little deviate from the received sense of them," 1 Blackst. Comm. 61; and "that whenever the intention of the legislators can be discovered, it must be followed with reason and discretion in the construction of the statute, although such construction seem contrary to the letter thereof," Bac. Abr. tit. Statute I. 5, rules which have been constantly recognized by our courts (*l*), and the construction contended for involving the absurdity that a man occupying a 9 *l.* freehold out of a borough may vote for a county, but that he who occupies an estate of 9,000 *l.* similarly situated may not, which could never have been the intention of the legislature, recourse must be had to the words "according to the provisions hereinafter contained," as referring to some conditions necessarily connected with *the value* of the occupancy, and without which the occupancy would confer no right of voting, which conditions it is argued are to be found in

(*l*) *Bridger* v. *Richardson*, 2 M. & S. 568; *Simpson* v. *Unwin*, 3 B. & Adol. 134.

the 27th section (see *post.* p. 12), where the words indicating local situation, before mentioned to be wanting in section 24 are to be found. As an additional argument in favour of the vote, the words "whether he shall or shall not have actually acquired the right to vote for such city or borough in respect thereof," are adduced to show, that the Act supposes a capacity to acquire a vote for a borough in respect of the freehold.

In a case before a Revising Barrister, where the occupier of his own freehold house and garden within a borough claimed to be entitled to vote for the county in respect of freehold land also occupied by him, but acquired by descent since the commencement of the occupation of the borough qualification, the claim was rejected, on the ground that the second freehold might have been added to the first, if necessary to make up the 10 *l.* qualification for the borough.

On the 25th section it has been contended that, where the copyhold, customary, ancient demesne, or leasehold house, warehouse, &c. is in the occupation of a female, a custom-house officer or other person incapacitated by law from voting at elections, the owner is entitled to a vote for the county. The argument in favour of the vote is in some degree similar to that urged on the wording of the previous section. It is contended, that as value alone does not give the right to vote, it must be taken in connection with all the conditions of the 27th section, (see *post.* 12) one of which is, that the occupier must be "not subject to any legal incapacity," a condition not answered by the tenant in the case supposed; and then it is said, that the Act contemplates a capacity to vote on the part of some one, and therefore does not intend to work a total disfranchisement with respect to this property.

On the other hand, the object of the Legislature is alleged to have been, that no building of the above tenures situated in boroughs should confer the right of

voting for counties on any one, an object which would of course be defeated by the construction above contended for.

§ 27. "And be it enacted, that in every city or borough which shall return a Member or Members to serve in any future Parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, any house, warehouse, counting-house, shop or other building, being either separately or jointly with [any other house, warehouse, counting-house, shop or other building, or with](*m*) any land within such city, borough or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than ten pounds, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a Member or Members to serve in any future Parliament for such city or borough: Provided always, that no such person shall be so registered in any year unless he shall have occupied such premises as aforesaid for twelve calendar months next previous to the last day of July in such year; nor unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township made during the time of such his occupation so required as aforesaid; nor unless such person shall have paid on or before the 20th day of July in such year, all the poor-rates and assessed taxes which shall have become payable from him in respect

(*m*) The words within brackets are to be found in the Scotch Reform Act, 2 & 3 Will. 4, c. 65, s. 11, and are only introduced here for the purpose of assisting the statement of one point which has been raised on the construction of the section before us.

of such premises previously to the 6th day of April then next preceding; Provided also, that no such person shall be so registered in any year, unless he shall have resided for six calendar months next previous to the last day of July in such year, within the city or borough, or within the place sharing in the election for the city or borough, in respect of which city, borough or place respectively he shall be entitled to vote, or within seven statute miles thereof, or of any part thereof."

The following are among the questions which have been raised on the above section:

1st. Whether a person occupying two buildings, together of the annual value of 10 *l.* is entitled to be registered?

This question has been differently decided. Those who contend for the affirmative in accordance with the rules of construction with regard to real property, hold "land" to include any building upon it: the advocates of the negative argue that every word applicable to a building having been used in the previous part of the section, the word "land" must be strictly confined to its ordinary signification. In this view they are supported by the additional words introduced into the Scotch Act, which are referred to in the note in the preceding page, and by one of the decisions of the House in a case where premises consisting of a stable and cart-shed with a strip of ground not above six feet broad, were held to be badly described as "land" (*n*).

2dly. Whether a person occupying in a borough a house as tenant, and land as owner, or *vice versâ*, being together, but not separately, of the annual value of 10 *l.*, is entitled to be registered as a voter for the borough?

Some are of opinion that the words "owner or tenant" are to be read *reddendo singula singulis*, and therefore, that the house and land must be both *owned* or both *tenanted*, an opinion which is in some degree sus-

(*n*) *Middlesex case*, 2 Peck. 59.

tained by the repetition of the words "occupied therewith." Others hold that the house may be tenanted, and the land owned by the voter in occupation, but that the converse will not hold. These opinions are founded on the words "under the same landlord," which cannot, it is alleged, apply to any case where the voter is *owner*.

A third(*o*) view has been taken of this section, viz. that an affirmative decision must be given to the question before us. In order however to support this view, it would be necessary to read the words "under the *same* landlord," as if they stood "not under *different* landlords."

3dly. Whether the words "occupied therewith" induce a necessary implication that the land to be occupied must be for the purpose of the trade (if any) carried on in the house, or may be used for any other distinct purpose, and yet confer a vote?

The Reporters are not aware of this point having been presented for decision, but the difficulty seems to have been suggested since the passing of the English Act, for in the corresponding clause in the Scotch Act the word "therewith" is not inserted (*p*).

4thly. Whether, in cases where the tenant is rated or assessed, but the landlord by arrangement with his tenant, pays the rates or taxes, the tenant is entitled to be registered?

This question has been decided in the affirmative by some of the Revising Barristers, who have held that the landlord was to be considered as the agent of his tenant. Other Revising Barristers have however held

(*o*) Both these constructions of the Act involve this difficulty, that a person who may be tenant only of a house and land together of 10*l*. a year, or tenant of a house of 8*l*. per annum, and owner of land of 2*l*. a year, is deemed a more substantial owner than the owner of a house of 8*l*. a year who is tenant of a piece of land at a rent of 2*l*.

(*p*) 2 & 3 Will. 4, c. 65, s. 11.

a contrary opinion on the ground, that this is not such a payment by the tenant as the Act requires (*q*).

5thly. Whether the rating must be of the claimant by name, or whether a virtual rating will be sufficient? as, for instance, where "Jones & Co." appear to be rated, whether Wm. Jennings, an occupying partner, is entitled to be registered (*r*)? and whether "Francis Jones" in the rate-book will be a good rating of "Samuel Jones," the identity being established by evidence (*s*).

6thly. Whether there is any and what limit to the period during which all the rates and taxes to "become payable" are to be paid by the voter?

This question has presented itself on several Circuits of Revision. It has been frequently proved that the claimant to vote has paid his rates and taxes for one year previously to the 31st day of July, but that with respect to former rates or taxes, or both, he has been a defaulter. It has also been disputed whether, in such cases, a legal remission of his rates by the magistrates under the 54th Geo. 3, c. 170, s. 11, or of his taxes by the commissioners of taxes operates as a payment by the voter.

7thly. Whether the non-payment of rates not demanded will disqualify the voter?

It is believed that, in accordance with the strict words of the Act, the decisions of the Revising Barristers have generally been in favour of the disqualification, although a different rule has always been adopted with regard to scot and lot voters (*t*).

8th. Whether the residence "for six calendar months" is to be strictly construed so as to render an actual

(*q*) See *Dorchester cases*, 1 Douglas, 347; 1 Fraser, 359; *Rex* v. *Woobly*, 2 East, 68; 3 Will. 3, c. 11, s. 6; *Vince's case*, (Southwark) 2 Peck. 161.

(*r*) *Boddimead & Co.* 2 Peck. 74, *Middlesex case.*

(*s*) *Wm. Probert's case*, 2 Peck. 395, *Leominster case.*

(*t*) *Cullen* v. *Morris*, 2 Starkie, 577; *Fowey case*, Corbet and Daniell, 125; *Shaftesbury case*, ibid. 266.

sleeping within seven miles of the borough necessary on the part of the voter during every night of that period?

This point has been variously decided. In some cases this actual residence has been required; indeed persons absent from their only permanent place of abode for the purpose of study have, in some instances, been held to be disqualified. In other cases a *bonâ fide* residence only has been deemed necessary in conformity with several decisions of the House of Commons and the Court of King's Bench (*u*). This question of residence was discussed at some length in the House of Commons on the 7th February 1832, on a motion by Captain Boldero, "That all military and naval persons employed (or actually serving) in the commercial marine of the United Kingdom, being entitled to vote for Members in Parliament be exempt from the application of the term non-resident." On that occasion the present Chief Justice of the King's Bench delivered his sentiments as follows: "I think the honourable and gallant Member opposite is mistaken in the law of the case with regard to the residence of the person whose family occupies a house in any city or borough. In my view of the case such person is to be taken as a resident, so that if any one were to sail to the East Indies, and yet leave his family in the occupation of a house in Westminster, he would not, by such absence, be deprived of his vote (*x*)." In accordance with this opinion are the decisions of civilians on questions of domicile (*y*).

(*u*) *Harwich*, 1 Peck. 389; *Col. Chaytor's case*; *Great Grimsby*, 1 Peck. 64; *Rex* v. *Sargent*, 5 T. R. 466; *Rex* v. *Mitchell*, 10 East, 520, *Bayley*, Just.; *Rex* v. *Ditcheat*, 9 B. & C. 185; *Littledale*, Just.; and see *Fillingham* v. *Bromley*, Turner & Russell, 530; *Attorney-general* v. *Sir C. Coote*, 4 Price, 183.

(*x*) Mirror of Parliament, vol. i. 1832, p. 546.

(*y*) Voet Comm. ad Pand. lib. 5, tit. 1, s. 98; Bynkershoek Quæst. Ju. Priv. lib. 1, c. 16; Lord *Alvanley's* dictum in *Somerville* v. *Somerville*, 5 Ves. 787, and *Pottinger* v. *Wightman*, 3 Mer. 67.

9th. Whether the distance of seven miles, in sections 27, 31, 32, 33, is to be measured as the crow flies, or by the nearest mode of access open to the public?

This question has been variously decided. In some cases the straight line has been the mode of ascertaining the distance; in others the high road; and in others the nearest approach by a public bridleway or footpath: the latter construction is supported by the decision of two Judges out of three in the case of *Leigh* v. *Hind* (*z*), and by several earlier cases (*a*).

It does not appear to have been contended at any of the Courts of Revision that the miles should be computed according to the custom of the country, though that is the mode of computation resorted to in the grant of licenses of dispensation for holding pluralities in the church (*b*).

On the 30th section a question has been raised on the words "rate for the time being." By some it has been contended that these words are only applicable to the half-yearly or quarterly rate immediately preceding the 31st day of July, while others hold that all the rates for twelve calendar months previously to that day are intended by the Act, where the applicant has so long been in occupation of the premises sought to be rated in his name. To secure the insertion of the applicant's name in the rate-book, it is contended, that all arrears of rates must be paid, though incurred previously to the commencement of his occupancy.

The 32d section, which relates to the right of voting of freemen, contains the following declaration: "That no person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified in such manner as would entitle him then to vote if

(*z*) 9 B. & C. 774.

(*a*) Cro. Eliz. 212; S. C. 2 Leon. 113; *Woods* & *Dennett*, 2 Starkie, 89; 1 Hawk. P. C. c. 112. s. 15.

(*b*) *Rex* v. *Bishop of Lichfield*, 2 Will. Blackstone, 968; Burns' Ecclesiastical Law, vol. 3. p. 106.

such day were the day of election, and this act had not been passed."

Upon this portion of the section it has been questioned:—

1st. Where, by the charter of a borough, freemen who are resident within the borough are alone entitled to vote, and, by the Boundary Act, the limits of the borough are extended, and a freeman is resident within the extended, but beyond the ancient limits, whether such freeman is entitled to be registered?

2d. Whether a freeman duly applying for, or actually obtaining, admission *after* four o'clock on the 31st of July, is entitled to be registered?

On the 36th section it has been made a question, whether loans by parish officers out of the rates, to indigent persons, constitute "parochial relief" or "alms" within the meaning of that section.

Another question also arises upon the same words in cases where persons have upon their own application been employed by the overseers at the parish works, and have been paid by them out of the poor-rates at a lower sum than the usual price of labour of the same class. It has been contended on the one side, that they must be held to have received "parochial relief;" on the other, that the work which the overseers are by the 43 Eliz.. 3, c. 2, bound to find for such persons as are able to maintain themselves, is to be distinguished from the relief which they are directed to give to the lame, impotent, old, blind, and others not able to work (*c*); and that, therefore, this class of persons is entitled to be registered and to vote. Pecuniary relief out of the rates has always been considered as "alms" by the decisions of Committees of the House; but this point never appears to have been raised before any of them (*d*).

(*c*) *Rex* v. *Collett*, 2 B. & C. 324.

(*d*) Since this has been written, the Bedford Committee have decided that such employment is a disqualification of the voter. See *Bedford case*, post. *Kemp's case*.

The 39th section provides, that the objector shall "*give* to the person objected to," or "leave at his place of abode as described in such list, or *personally deliver* to his tenant in occupation of the premises described in such list," a notice in writing according to the form numbered 5 in the said schedule (H.), or "to the like effect." This form is signed *A. B.* of [place of abode.]

The wording of the above quoted portion of this section is peculiar, and has been considered to indicate an intention that the objector shall be bound to a more strict course with respect to the notice to the party than is required to be adopted in giving notice to the overseer. In the latter case, the words are "give, or cause to be given," which are further enlarged by the 79th section, to a transmission by the post. In the former case, the words are "*give*," "*leave*" or "*personally deliver*," upon which it has been contended, that the objector must be himself the actor. Be this as it may, it is very doubtful whether the words "personally deliver to his tenant in occupation," mean a delivery in the person of the objector, or to the person of the tenant.

Another question has been raised, whether, supposing the objector himself to deliver the notice to the wife or servant of the tenant, such a delivery would be good.

The words "to the like effect" have given rise to several questions, the most important of which in their consequences, have been those raised on the signatures and designations of the objectors. On many circuits the notices have been signed by agents using the name of their principal, in other cases the notices have been signed by the objectors with the initial only of their Christian names, or with the omission of their places of abode.

In favour of the validity of the second class of notices, the decisions in cases of notices of action against magistrates have been urged, where, though the

24 Geo. 2, c. 44, requires that on the back of the notice "shall be indorsed the name of such attorney or agent, together with his place of abode," it has been held, that the initial of the Christian name is sufficient (*e*). On the third, an authority has been cited to this effect, that where the attorney lived at *D.*, and signed thus "given under my hand at *D.*," the notice was insufficient, because it was not expressly stated that the attorney lived at *D* (*f*): and reference has been also made to the decisions (*g*) under the Annuity Acts, where the want of the addition in the memorial of the place of abode of the witnesses to the warrant of attorney has been held fatal (*h*).

(*e*) *Mayhew* v. *Locke*, 2 Marshall, 377; *James* v. *Swift*, 4 B. & C. 684.

(*f*) *Taylor* v. *Fenwick*, M. 23 Geo. 3, B. R., cited in *Lovelace* v. *Curry*, 7 T. R. 635,

(*g*) *Darwin* v. *Lincoln*, 5 Bar. & Ald. 444. *Smith* v. *Pritchard*, Ib. 717.

(*h*) Since these remarks have been written, two committees have come to opposite conclusions upon this latter point. The Petersfield having in effect decided that such a notice was good; and the Bedford having expressly determined that it was bad. See *Petersfield*, post. p. 46; *Cookson's case*; and *Bedford*, post. *Flight's case*. See also *Ripon case*, post.

REPORTS OF CASES

OF

Controverted Elections.

CASE I.

CITY OF BATH.*

The Committee was appointed on the 28th February 1833, and consisted of the following gentlemen:

Thomas Law Hodges, Esq. M. P. for West Kent, *(Chairman.)*

John H. Hodgetts Foley, Esq. M. P. for Droitwich.
William Addams Williams, Esq. M. P. for Monmouth County.
John A. Murray, Esq. M. P. for Leith, &c.
John Walbanke Childers, Esq. M.P. for CambridgeCounty.
Wm. Bird Brodie, Esq. M.P. for Salisbury.
Sir Jacob Astley, Bart. M.P. for West Norfolk.
Thomas Bewes, Esq. M. P. for Plymouth.
Richard Greaves Townley, Esq. M. P. for Cambridge County.
W. H. Hyett, Esq. M.P. for Stroud.
Hugh Owen Owen, Esq. M. P. for Pembroke.

Petitioners:—Electors.
Sitting Members:—Gen. Palmer and John Arthur Roebuck, Esq.
Counsel for the Petitioners:—Mr. Harrison and Mr. Follett.
Agents:—Messrs. Vizard and Leman.
Counsel for the Sitting Member:—Mr. Maule.
Agents:—Messrs. Sherwood and Thorp.

IN this case the petition was of electors; it stated, that during the election two persons entitled to vote at it requested the returning-officer to administer an oath to Mr. Roebuck, as to his qualification to sit in Parlia-

Petition states

Oath taken by sitting member of

* For the greater part of the notes of this case the Reporters are indebted to their friend Mr. Webster.

qualification in the parish of Camberwell, in the county of Surrey.

ment, which was administered to him accordingly, in the manner prescribed by the 9th Anne, c. 5, ss. 5, 6, 7. And that in the oath (which was set out at length) he stated, that the lands out of which the qualification arose were in the parish of Camberwell, in the county of Surrey.

That there was no such parish as Camberwell in the county of Surrey.

That the petitioners had been informed and believed that there was no such parish in the county of Surrey, but that Camberwell was a large and populous village, situate in the said county, and contained several parishes or parts of several parishes; that there was a parish known by the name of St. Giles Camberwell, which included the lordship of Camberwell, the liberty of Peckham, and the hamlet of Dulwich; and that there was also a parish distinct for all ecclesiastical purposes, known by the name of St. George Camberwell, all in the said county of Surrey; and that Mr. Roebuck had not taken the oath with regard to his qualification, demanded of him by the said two electors, in conformity with the provisions contained in the said statute, inasmuch as he had not correctly or truly stated the parish, township or precinct, in which the lands, tenements or hereditaments were situate, in respect of which he claimed to be qualified to appear as a candidate, or to be elected or returned to sit or vote as a member of Parliament, for the said city of Bath, and which ought to have been particularly stated in the said oath, in pursuance of the directions in that behalf contained in the said statute.

That the petitioners had made inquiries in the village of Camberwell, and had been unable to find his qualification.

That they had, notwithstanding the vagueness and looseness of the description contained in the said oath of the situation of such lands, made diligent search and inquiries in the village of Camberwell, but had been unable to find that Mr. Roebuck was seised, either at law or in equity, of any lands in the said village of Camberwell of the annual value of 300 *l.*

Prayer that the return

The petition then, after stating some declarations of Mr. Roebuck as to his qualification, of which no proof

was given, and that the petitioners had reason to believe, and did believe, that Mr. Roebuck had not at the time of the election any such estate at law or in equity, in lands, tenements or hereditaments, as qualified him to appear as a candidate, or to be elected or returned, or to sit or vote, as a member of Parliament prayed the House to declare, that Mr. Roebuck was not duly elected, and ought not to have been returned to sit as a member for the said city, and to direct the clerk of the House to erase his name from the return, and declare the election, so far as regarded his return, to be wholly null and void.

should be amended, and his election declared void.

It appeared from the evidence, that on Saturday, the 8th of December 1832, a Mr. Graham requested Mr. Selby, a solicitor in London, to sell a life annuity of 300 *l.* per annum to Mr. Roebuck, to whom Mr. Selby was then a stranger, for the sum of 5,275 *l.*, being the value set upon such an annuity by Mr. Morgan the actuary; Mr. Selby agreed to this proposal, and sent the same day to Mr. Ashurst, Mr. Graham's solicitor, an abstract of his title to some freehold lands in Camberwell, on which the annuity was to be secured, and which were of greater value than the intended annuity and all incumbrances on them: on the following day (Sunday) the agreement was settled, and Mr. Selby wrote a letter to Mr. Roebuck, which he gave to Mr. Graham, who went to Bath that night by the mail. A grant of the annuity, secured upon these lands at Camberwell, and payable on the 10th of June and 10th of December in every year, and containing the usual provision for the apportionment of the annuity in the event of the grantee's death during any current half-year, was made by a deed between Mr. Selby of the one part and Mr. Roebuck of the other part, executed by Mr. Selby, in London, before eleven o'clock in the forenoon of Monday, the 10th of December. A receipt for the purchase-money was regularly indorsed on this deed, and signed

Held, that a grant of a rent-charge of 300 *l.* "to be from thenceforth payable" by equal half-yearly payments, on the 10th of June and the 10th of Decr. which was executed on the 10th Decr., and re-executed on the 12th, and the consideration-money for which was subsequently paid in the presence of one witness only, was a sufficient qualification on the 10th, (the day of nomination.)

by Mr. Selby. In fact, however, it was not then paid to him; but some note or guarantee for it, the nature of which did not transpire in evidence, was given him by two friends of Mr. Roebuck. The deed was then delivered to Mr. Ashurst, by whom it was sent to a conveyancer, who advised the introduction of some words, in order to show in whom the freehold of some part of the property was vested. In consequence of his advice, the following words were introduced into the deed, after the description of some of the parcels which were in lease at the time: "The freehold, inheritance and reversion of all which hereditaments hereinbefore particularly mentioned have, since the dates of the said two several indentures of demise, become vested in the said George Selby." The deed was, in consequence of this alteration, re-executed by Mr. Selby, at three o'clock on Wednesday, the 12th of December, at his office in London, by passing a dry pen over his signature, in the presence of the witnesses who had attested his previous execution of it. The purchase-money was paid by Mr. Roebuck in person to Mr. Selby about a month after this last execution of the deed, at a banking-house in London, in the presence of a person unknown to Mr. Selby.

The day fixed for the election at Bath was Monday the 10th of December. A written requisition was presented to the returning-officer to tender the qualification-oath to Mr. Roebuck at the commencement of the business of the day. As one of the persons who signed it was not, however, an elector, the returning-officer refused to tender it. At the conclusion of the speeches of the candidates, their proposers and seconders, another requisition was made to him by two electors, and he then tendered the oath to Mr. Roebuck, who took it about two o'clock in the afternoon. The poll was taken on the 12th and 13th, and the return made on the 14th of December. After the petition Mr. Roebuck gave a particular of his qualification to the clerk of the House, as required by the

order(*a*) of the 21st of November 1717, except that the particular did not contain the name and place of abode of the witness to the payment of the money. Inquiry was afterwards made on the part of the petitioners into the value of the property, and some evidence was given to show that it was below the requisite value. No great weight appears however to have been attached to this inquiry by the Counsel on either side.

Mr. Harrison for the Petitioners:

In this case there is only one point, the question of qualification. The 9th Anne, c. 5, which provides that the qualification to sit or vote in the House of Commons for any borough must be either a legal or equitable estate for life in freehold or copyhold lands of the annual value of 300 *l.* above reprizes, contains, in section 1, this declaration: "And that if any person who shall be elected or returned to serve in any parliament as a knight of the shire, or as a citizen, burgess or baron of the cinque ports, shall not *at the time of such election*

(*a*) 18 Journals, 629, Orme, 278. The following are the resolutions on the subject: 1. Resolved, that notwithstanding the oath taken by any candidate at or after any election, his qualification may be afterwards examined into. 2. Resolved, that the person whose qualification is expressly objected to in any petition relating to his election, shall, within 15 days after the petition read, give to the clerk of the House of Commons a paper, signed by himself, containing a rental or particular of the lands, tenements and hereditaments whereby he makes out his qualification; of which any person concerned may have a copy. 3. Resolved, that of such lands, tenements and hereditaments, whereof the party hath not been in possession for three years before the election, he shall also insert in the same paper from what person, and by what conveyance or act in law he claims and derives the same; and also the consideration, if any, paid, and the names and places of abode of the witnesses to such conveyance and payment. 4. Resolved, that if any sitting member shall think fit to question the qualification of a petitioner, he shall, within 15 days after the petition read, leave notice thereof in writing with the clerk of the House of Commons; and the petitioner shall in such case, within 15 days after such notice, leave with the said clerk of the House the like account in writing of his qualification as is required from a sitting member.

and return be seised of or entitled to such an estate, in lands, tenements or hereditaments, as for such knight, or for such citizen, burgess or baron respectively, is hereinbefore required or limited, such election and return shall be void."

It is by the same Act provided, in sect. 5, "That every person (except as therein mentioned) who shall appear as a candidate, or shall by himself or others be proposed to be elected to serve as a member of the House of Commons for any county, city, borough, or cinque port, in England, Wales, or Berwick-upon-Tweed, shall, and he is hereby enjoined and required, upon reasonable request to be made to him (at the time of such election, or before the day to be prefixed in the writ of summons for the meeting of the parliament) by any other person who shall stand candidate at such election, or by any two or more persons having right to vote at such election, take a corporal oath in the form or to the effect therein mentioned." The form of the oath is the same with that administered to Mr. Roebuck.

This Act was followed by the resolutions of the House in 1717 (*b*), with which the petitioners insist that Mr. Roebuck has not complied, especially by not stating in his particular the name of the witness to the payment of the money.

It is clear that the words in the Act, without the parenthesis, refer to the time of election, and cannot be qualified by those within the parenthesis, which were intended to provide for the possible case of the absence of a candidate at the time of the election.

On the day on which Mr. Roebuck took the oath he had not the requisite qualification. The annuity was payable on the 10th of June and the 10th of December. The deed was only executed on the 10th which granted him an annuity to hold "from thenceforth," which must mean from the 11th, the next day, for the law admits

(*b*) *Ante*, p. 25.

no fractions of a day. The deed was not, even by his own account, a perfect deed on the 10th, for it was shown to have been re-executed at three o'clock in the afternoon of the 12th, at which time more than half the electors of Bath had polled. The 10th of December was, properly speaking, the day of election, for on that day the election would have taken place had there not been a third candidate. The return, therefore, cannot stand. With respect to value, this case falls precisely within the determination of the Committee on the *Leominster case* (*c*). There Sir W. Fairlie had a qualification conveyed to him, but had not paid the purchase-money at the time of the election. The money remained therefore an equitable charge on the land, and as such diminished its value below what is required by the statute. So in this case the money was not paid, and the note or security which was given did not prevent its being an equitable charge also on the annuity.

Mr. Maule for the Sitting Member:

Mr. Roebuck had such an estate as both in law and in equity entitled him to sit in parliament. Under the provisions of the first section of 9 Anne, c. 5, if before the return the party has the required qualification, the return is not avoided. All that the statute says is, that he shall not sit and vote without being qualified, and there is nothing in it to show that before the time the return is made the party must have the property. If therefore Mr. Roebuck acquired a competent estate before the final closing of the poll he would not be prevented from sitting in parliament. Qualifications were formerly obtained pending the election. In the *Bristol case* (*d*) a qualification of this description was held good. The Reform Act has not made any alteration in the law in this respect, and what could be done formerly during the polling of fifteen days can be done now during the election of two. If the members had been

(*c*) Corb. & Dan. 1. (*d*) Rogers' Elections, 59.

chosen on the day of nomination that would have been the day of election: but as there were more candidates than two the return-day is the day of election.

The *Leominster case* has not the remotest application to the present. There Sir W. Fairlie, pending the election, contracted, not for a rent-charge, but for a landed estate of 325 *l.* a year, and obtained no sort of conveyance of it. The Committee by deciding on the question of value must be held to have admitted that a qualification could be obtained during the election. On a contract for the purchase of land the purchase-money is in equity a charge on the estate; but a grant of a rent-charge when once made vests it irrevocably in the grantee, and the grantor has no lien on the land. The oath is not that the party is actually possessed of the legal estate in the hereditaments, but it says I have *bonâ fide* such an estate in law or in equity as will entitle me to sit in parliament (*e*). Where there is a contract for a purchase, but no conveyance has been made, there the purchaser has the equitable estate. Here the negociation of Saturday between Mr. Selby and Mr. Graham was completed on the Sunday morning, and a letter written by Mr. Selby was sent down by Mr. Graham to Mr. Roebuck. As soon as the letter was sent, there was a contract for an annuity (*f*). There is no doubt, therefore, that Mr. Roebuck could take the oath on the Monday; for it is

(*e*) The words are "as doth qualify me to be elected and returned, &c."

(*f*) See 2 Prest. Conveyancing, 362, 363, where it is said, that a deed executed on a Sunday is binding and free from all well-founded objection, and *Drury* v. *De la Fontaine*, 1 Taunt. 131, where a private sale of a horse by a horse auctioneer on a Sunday was held to be not within the 29th Car. 2, c. 7, and therefore valid. See also *Fennell* v. *Ridler*, 5 B. &. C. 406; *Smith* v. *Sparrow*, 4 Bing. 85. *Williams* v. *Paul*, 6 Bing. 653; and *Begbie* v. *Levy*, 1 Crom. & J. 180, where, although the bill was dated on a Sunday, the Court, in the absence of evidence, would not presume the acceptance to have been written on that day; and held, that even if it had, such an act would not be an act of ordinary calling within the 29 Car. 2, c. 7; and *Rex* v. *Inhabitants of Whitnash*, 7 B. & C. 596, where a contract of hiring made on a Sunday between a farmer and a labourer for a year was held valid.

clear from the evidence that at 11 o'clock on that morning he had a good legal rent-charge (*g*). The property is proved to be worth far more than 300 *l.* a year, and there is a particular showing the rental to be 735 *l.* a year. The objection to that part of the case, viz. that the schedule is defective, is made in order that the Committee may not find the petition frivolous and vexatious. A witness goes down to Camberwell, and he finds the parish of St. Giles, but he does not find the parish of Camberwell or all the tenants, though he finds the tenants who pay the greater part of the rent. Most of them are tenants at a ground rent on building leases. It is not surprising therefore that the witness could not find that Mr. Roebuck had any property there. It has been contended that Mr. Roebuck took no estate in the rent-charge until the 11th, because there is no fraction of a day in law. The meaning of that rule of law is, that the day is supposed to be concentrated in a single instant of time. Thus if a man was born on the 1st of January 1800 he would be 21 on the 31st of December 1820, as was decided in the case of the election for Bishop's Castle (*h*), which turned on this point. Hence at the moment of the execution the whole deed must be considered as complete and in operation. Under the words "from henceforth," the instant the deed was sealed and delivered the rent-charge vested in Mr. Roebuck (*i*). The alteration in it did not divest the estate out of him; even if the deed had been destroyed, or the seal torn off, the estate would have remained in him. The payment of the purchase-money was not

(*g*) Where a lease for three years was delivered at four o'clock in the afternoon of the 20th of June, it was resolved, that the lease should end the 19th of June in the third year, for the law in this computation doth reject all fractions and divisions of a day for the incertainty. 5 Rep. 1, and see 1 Inst. 135.

(*h*) Rogers, ch. 3, p. 72.

(*i*) See *Freeman* v. *West*, 1 Wils. part 2, p. 165. Lease for lives to begin "from the day of the date thereof," and seisin afterwards delivered is good, and shall not be said to convey a freehold in futuro.

necessary; all that was required was that Mr. Roebuck should have a rent-charge, and if it had been granted to him without any consideration it would have been sufficient (*k*). The question is not the amount of the consideration but of the rent-charge. It has been said that the witnesses to the payment of the purchase-money must be called. The subscribing witnesses to the deed have been called, and they do not remember that any bond or note passed. In fact, however, a note was given in their presence for the purchase-money.

The Committee determined that J. A. Roebuck, Esq. one of the sitting members for the city of Bath, at the time that he took the qualification-oath on the 10th day of December 1832, was duly qualified as a citizen to serve in the present parliament for the city of Bath, and that the petition was not frivolous or vexatious.

The petitioners against a return for want of a qualification, may enter into evidence to dispute the particular of qualification delivered in to the House.

In the course of the above case, upon Mr. Harrison's calling a witness to prove that he had made inquiry as to the truth of the particular delivered in by Mr. Roebuck to the clerk of the House, Mr. Maule objected that the petitioners ought to be confined to the statements in their petition. No mention of objections to this statement was made in their petition, and they ought to have presented a second petition if they wished to enter upon evidence to dispute it. If Mr. Roebuck had delivered in a wrong particular he had been guilty of a great breach of privilege, but that could not be discussed before the Committee.

Mr. Harrison insisted that no one in practice had ever heard of a second petition. The petition had stated that Camberwell was an extensive village, and that they had made inquiry and been unable to find out any property there belonging to Mr. Roebuck. The particular was delivered in to enable that inquiry to be made, and he ought to be permitted to prove that it was so vague that no inquiry could be made with any hope of success.

(*k*) The words of the third resolution of 1717 are, "and also the consideration, if any, paid."

Mr. Maule, in reply, relied on the danger of permitting parties to enter upon evidence as to facts not stated in their petition.

The Committee decided "That Mr. Harrison might proceed with the examination."

CASE II.

BOROUGH OF PETERSFIELD.

The Committee was appointed on the 26th of February 1833, and consisted of the following gentlemen:

Hon. George Lamb, M. P. for Dungarvon, (*Chairman.*)

Sir George Cayley, MP. for Scarborough.
Edward Buller, Esq. M.P. for North Staffordshire.
Henry Handley, Esq. M.P. for Lincolnshire, parts of Kesteven, &c.
The Hon. Henry Stafford Jerningham, M.P. for Pontefract.
R. A. Slaney, Esq. M. P. for Shrewsbury.
Sir John Johnstone, Bart. M. P. for Scarborough.
J. Wedgewood, Esq. M. P. for Stoke-upon-Trent.
Robert G. Throckmorton, Esq. M. P. for Berks.
Edward W. W. Pendarves, Esq. M. P. for South Cornwall.
Sir William Chaytor, M. P. for Sunderland.

Petitioners:—Hylton Jolliffe, Esq. and Electors.
Sitting Member:—John George Shaw Lefevre, Esq.
Counsel for the Petitioner:—Mr. Harrison, Mr. Serjeant Merewether, Mr. Follett and Mr. Hope.
Agents:—Messrs. Currie, Horne and Woodgate.
Counsel for the Sitting Member:—Mr. Pollock, and Mr. Serjeant Heath.
Agents:—Messrs. Lowdham, Parke and Freeth.

Statements of petition.

THE petition was against the return of Mr. Lefevre, and prayed that Mr. Jolliffe might be declared elected

in his stead. It stated that Mr. Jolliffe was a candidate at the last election for the borough of *Petersfield.*

That, according to the last determination of a Committee of the House, upon a petition of appeal, in the year 1821, the right of election of burgesses to serve in Parliament for that borough was determined to be in the freeholders of land, or ancient dwelling-houses or shambles, or dwelling-houses or shambles built upon ancient foundations, within the said borough, such lands, dwelling-houses or shambles not being restricted to entire ancient tenements.

Determination of ancient right of voting.

That at a previous election votes were tendered for shares of Cricket-field and rejected.

That, at the election held on the 30th of July 1830, for burgesses to serve in Parliament for the said borough, at which Sir William George Hylton Jolliffe, Gilbert East Jolliffe, Esq., Henry John Herbert, commonly called Lord Porchester, and John Ogle, Esq. were candidates, certain persons tendered their votes for the said Lord Porchester and John Ogle, Esq. claiming to vote as shareholders in the Petersfield Improvement Association, in respect of shares or interests in a piece of freehold land within the said borough, known by the name of the Cricket-field; but that such votes were rejected by the returning-officer, and the said Sir W. G. H. Jolliffe and G. E. Jolliffe, Esq. were declared duly elected, and returned to serve in that Parliament as burgesses for the said borough.

That they were rejected on a Petition by a Committee.

That the said Lord Porchester and John Ogle, Esq. petitioned the House against such return, and on the hearing of such petition attempted to establish that the votes so tendered on their behalf were good votes, and ought to have been received by the returning-officer at the said election in the said year 1830, but that the Committee, on hearing evidence in support of such votes, and the arguments of counsel upon two of such votes, separately and successively, after a long and patient investigation, determined, on the 19th and 22d days of March 1832 respectively, that both of such

votes were bad, and had been properly rejected by the returning-officer, the Committee being of opinion that such votes were fraudulent and not *bonâ fide*; that the counsel for the petitioners thereupon admitting that the votes of all the remaining persons who claimed in respect of shares in the said Association stood on the same grounds as the two on which the Committee had already determined, declined attempting to establish the same; that Sir W. G. H. Jolliffe and G. E. Jolliffe, Esqr. were thereupon declared by the said Committee to have been duly elected.

That the claimants to vote in respect of shares in the Cricket-field were placed on the lists by the revising barristers.

That the overseers of the parish of Petersfield and other places sharing in the election of a member for that borough, having made out lists of the voters for the borough, the barristers appointed to revise those lists held courts within the borough for that purpose, and that divers persons, whose names had been omitted in the said lists made out by the overseers, appeared before the barristers, and claimed to have their names inserted therein. That it appeared before such barristers that the qualifications in respect of which several of such persons claimed consisted of shares or interests in the said Cricket-field, to which they claimed to be entitled as shareholders in the said Petersfield Improvement Association; that it appeared in evidence, and was admitted by such last-mentioned persons, that their qualifications and right to vote rested on the same grounds as those of the two persons before-mentioned to have claimed to be entitled to vote at the election in the year 1830; and it further appeared that such claimants, in fact, were persons whose votes the counsel for the petitioners declined to attempt to establish after such last-mentioned determination of the Committee of the House; but that the barristers, notwithstanding such last-mentioned determination, decided that the names of such several persons ought to be inserted, and did, in fact, insert them in the said lists of voters.

Barristers inserted other names improperly in the list.

That the barristers also decided to be entitled to be inserted, and did in fact insert, in the said lists of voters, the names of divers other claimants, of whom some claimed in respect of qualifications which it appeared in evidence were fraudulent, occasional, and not *bonâ fide*, and others claimed in respect of qualifications which it also appeared in evidence were not of the clear yearly value of ten pounds, although such last mentioned persons claimed to be entitled only in respect of rights conferred by the late Act for the amendment of the representation of England and Wales.

The register formed from such lists.

That the register of voters used and acted upon at the time of the last-mentioned election for the said borough was formed from the said lists of the voters for the said borough, revised as aforesaid by the said barristers, and that in consequence of their decisions, (as well of those thereinbefore-mentioned, as also of others), the names of divers persons who voted at such last election were improperly inserted in such register, and such persons illegally and improperly voted at such election.

That at the election persons improperly placed on register and others voted for sitting member.

That at the said last election the petitioner, and J. G. S. Lefevre, Esq. were the only candidates; that a poll having been demanded and granted, was proceeded on, and that the said several persons thereinbefore-mentioned to have been improperly inserted in the said register of voters for the said borough, and other persons who had been improperly inserted and retained in the said register, were allowed to vote, and did in fact vote, for the said J. G. S. Lefevre, and that divers other persons not entitled legally or *bonâ fide* to vote in the choice of a Member to serve in Parliament for the said borough, were also allowed by the returning-officer to vote, and did in fact vote for the said J. G. S. Lefevre.

The numbers at the close of the poll were, for the sitting member 101, for the petitioner 100.

The counsel for the petitioner stated, that this was a case of simple scrutiny, and that they should begin

with a vote which they contended had been improperly placed by the barrister on the list.

William Holdaway's case.

The vote of Wm. Holdaway was then entered upon, who claimed a right to vote in respect of a share in the Cricket-field. To establish the invalidity of this vote, the returning-officer at the election was called, who produced the poll-book in which there was an entry "William Holdaway, High-street, share in Cricket-field," and a poll-clerk at the election in 1830, who produced a poll-book at that election, in which the names of Sir James Macdonald, Thomas Mellish, and William Holdaway, were entered as rejected, the qualification claimed by all of them being stated to be portions of the Cricket-field. Mr. Gurney, the short-hand writer, was then called to prove, from the proceedings before the Committee in 1831, that Holdaway claimed the same interest, and under the same deed as Sir James Macdonald and Thomas Mellish, whose votes were then declared invalid; but an objection then was taken, that the proceedings before the previous Committee could not be evidence of a fact, which was assented to, after a short argument, by the Committee. The counsel for the petitioner then proved, that notice to produce the deed under which they asserted that Holdaway, Sir James Macdonald, and all other voters for the Cricket-field derived their titles, had been served upon six of the directors of the Petersfield Improvement Association, upon Holdaway, and upon the sitting member. They then called on one of the directors to produce it, who, upon being examined, admitted that it had been in his possession, and that he had produced it before the revising barrister, but said that he had last month handed it over to the solicitor to the association. They then proceeded to call witnesses to prove the contents of it.

Short-hand writer's notes of evidence before a Committee not admitted as evidence of a fact.

Proof of notice to produce having been served on the voter and six of the directors of a company, in respect of a share in whose property the right to vote was claimed is sufficient to let in secondary evidence of the deed constituting the company.

Heath, Serjt. for the sitting member, objected to this mode of proceeding, on the ground that secondary evidence could not be entered upon to prove the contents

of a deed, unless it was previously clearly shown, not only that notice to produce it had been regularly served upon a party, but also that it was in the possession of that party. This was the rule laid down by Mr. Phillips in his Treatise on Evidence (*a*), and though he mentioned exceptions to it, as in the case of a notice to an owner of a ship to produce a paper in the possession of his captain (*b*), yet none of these exceptions applied to the present case. In civil actions it was well known that notice to produce could only be served upon parties to the cause; upon any other person a *subpœna duces tecum* must be served, and if he refused to produce a document, the only remedy the party who called upon him had, was, to bring an action for damages against him. No judge would allow secondary evidence of a deed in the possession of a third person, although the man might be in Court with the deed in his pocket, and refuse to produce it. The same rule ought to be followed by committees. The petitioners and sitting member were the parties to the cause, and there was no evidence whatever to prove that this deed had ever been in the possession of the sitting member. As far as related to the directors, it was in proof that it was not now in their possession, and had it been so, they, being trustees, according to the well-known rule of committees as established in the Middlesex Case (*c*), ought not to be called upon to produce it without the consent of their *cestui que* trusts.

Merewether, Serjt. for the petitioner:—

The argument on the other side proceeded upon a misapprehension as to who were the parties before the Committee. Whilst his own vote is at issue each voter is treated as a party in the cause. This position is asserted by Rogers in his Treatise on the Law and Practice

(*a*) Phillips on Evidence, vol. 1, c. 8, s. 1, p. 440.

(*b*) *Badney* v. *Ritchie*, 1 Starkie, 338.

(*c*) 2 Peck. 1.

of Election Committees (*d*), and is fully borne out by the decisions of the committees in the Bedfordshire (*e*), Herefordshire (*f*), and Middlesex cases (*g*), which he cites in support of it. None of these cases were however so strong as the present. Holdaway was a party, and claiming under the deed, the directors were his trustees, and the possession of their attorney, according to all the rules of courts of law with regard to agency, was in fact his possession.

Heath, Serjt. in reply,

Insisted, that there was no privity between Holdaway and the solicitor for the directors, without which secondary evidence of a deed in his possession could not be received.

The Committee determined, "that the counsel for the petitioner were at liberty to give secondary evidence of the deed under which Holdaway claimed."

Extracts of a deed inserted in the minutes of the proceedings of a former committee admitted as secondary evidence of its contents.

The counsel for the petitioner then proceeded to prove, that the deed under which Holdaway claimed before the barrister was the same deed as had been produced to establish his right to vote at the election in 1830, before the Committee in 1831, and before the assessor to the returning-officer at the subsequent election in the same year; and they then called the short-hand writer to read from the minutes the extracts of the deed which had been read before the former Committee. Previously however to his doing so, he was examined as to the manner in which these extracts had been entered upon the minutes, and he stated that they were not taken down at the time they were read; but according to the usual course in such cases, a copy of the deed was furnished him, from which his clerks had copied them. He stated that he would answer for the accuracy of his clerks; that these extracts were copied, together with the other evidence, and inserted in the

(*d*) P. 262.
(*e*) 2 Luders, 568.
(*f*) 1 Peck. 210.
(*g*) 2 Peck. 181.

minutes the first day, and delivered to the chairman of the Committee the next day, and other copies of these minutes were taken by the election clerks, and delivered to the parties, and that these extracts were commented upon by counsel during the other four days which the Committee sat, and that no fault was found with their accuracy. Another witness stated, that he had frequently read both the original deed and the extracts of it inserted in the minutes, and that he believed the extracts were in the exact words of the deed, but he had never actually compared them together.

Heath, Serjt., insisted, that the extracts on the minutes could not be received as secondary evidence. It would be first necessary to establish that the copy of the deed from which they were copied was a correct copy, and secondly, that Mr. Gurney's clerks had copied correctly from that copy. The other evidence, too, as to belief without any comparison of the minutes and deed was not sufficient. Admitting, however, that this evidence of the contents of the deed could be received, the deed itself could not be read even were the directors to come before the Committee and offer to produce it, without they had the permission of their cestui que trusts. This principle had been fully established by the decisions of the Committee on the Middlesex election in 1804, in the cases of Joseph Lifford (*h*), Arthur Bolt (*i*), and Henry Davison (*k*), and had ever since been invariably acted upon.

Merewether, Serjt., contended that *primâ facie* evidence was all that was required for secondary evidence, provided it was the best that the party could produce, because it was always in the power of the opposite party to disprove its correctness by producing the instrument itself. To satisfy this rule it would be quite sufficient to produce some one who had read the

(*h*) 2 Peck. 118.
(*i*) 2 Peck. 131.
(*k*) 2 Peck. 119.

deed, and could speak from memory as to its contents. Here, however, the very best evidence was tendered that could possibly be offered. The minutes of a Committee were the records of the House. It was not competent for counsel to dispute their accuracy, by questioning the manner in which they were made out. Who ever heard of an attempt to impeach any one of the numerous records of our courts of law on account of some possible error of the clerk who transcribed them? As to the second point taken on the other side, it was very true that committees would not oblige trustees to produce deeds without the consent of their cestui que trusts, but their not producing them afforded a good and valid reason for the admission of evidence of the contents of them. The absurdity of a different rule would be, that any one might claim a vote for Petersfield, and if he asserted that his title-deed was in the hands of his trustees, it would be impossible to contradict his claim.

The Committee by their chairman informed the Counsel, that after considerable deliberation they had resolved that the counsel for the petitioner should be at liberty to give parol evidence of the deed, and also to give in evidence the minutes of the former Committee.

Parol evidence was then given of the contents of the deed, and the extracts of it inserted in the minutes of the former Committee were read. It was a conveyance by lease and release dated the 21st and 22d July 1830, bound up in a book together. The release was of five parts, and the effect of it was, after a recital, that the town of Petersfield wanted improvement, and that great benefit would arise to it by the building of respectable houses, schools, and institutes for instruction and moral improvement, and that there were many fit spots for building such in the neighbourhood; that an association had been formed for those purposes, of which the persons of the 3d and 4th

parts were members, and those of the 4th part managers, which proposed to raise the sum of 7,500 *l.* in 1,500 shares of 5 *l.* each, and had agreed to purchase the Cricket-field for those purposes from Mr. H.; that Mr. H., in consideration of 1,000 *l.*, conveyed one moiety of this field to the parties of the 3d part, of whom there were 250, in equal shares, and the other moiety to the parties of the 4th part, in trust to assign it out to future shareholders. Sir J. Macdonald, Mr. Mellish and Holdaway were parties of the 3d part to this deed. The resolutions of the committee were also read, declaring that the votes of Sir J. Macdonald and Mr. Mellish should not be put on the poll. Proof was further given of the rejection of Holdaway's vote, and those of all claiming similar interests with him in the Cricket-field, by the assessor to the returning-officer at the election in 1831, and of their admission by the revising barristers after argument in the lists; and of a petition by Mr. Ogle and Mr. Marsh, the candidates at the election in 1831, complaining of the rejection of those votes, having been presented, and afterwards abandoned. It appeared however that Mr. Ogle died just before the day appointed for taking the petition into consideration.

Merewether, Serjt. now contended, that this vote must be declared bad, unless the other side produced evidence to show that it had been by some means rendered good since the last determination of a Committee. Although committees were not bound by the decisions of former committees, yet unless some strong reason was shown to prove that they were erroneous, they invariably abided by them. In the second Southwark case (*a*), Mr. Thellusson had been declared by the decision of a Committee unfit to sit for that borough, on account of treating: all that a subsequent Com-

(*a*) Clifford, 221. See however on this subject the Note to the *Oakhampton case*, 1 Peck. 376.

mittee required upon a petition against his second return, was evidence of his identity: immediately that was afforded they declared his return void. Here it was proved that Holdaway claimed under the same deed as Sir J. Macdonald, whose vote was rejected by the former Committee; his vote therefore also had been in effect rejected by them; it had been refused by the assessor in 1831; the petition to impugn his decision was never prosecuted, and no one had ever conceived these claimants for the Cricket-field to be good votes except the revising barrister. The 33d section of the Reform Act, which preserved existing rights of voting, could not apply to this case, where no right of voting had ever existed at all.

Mr. Pollock for the sitting Member:

The present Committee is not bound by the decisions of the last Committee, for which no reasons were given or could be given. Their judgment might have proceeded on the ground of pauperism or other disqualifications, which might no longer apply to this voter when he came before the barrister. There is, however, no occasion to resort to this argument, which would apply had there been an express adjudication; but in truth Holdaway's particular vote was never called in question before them. How then was the barrister, how are the Committee, to decide, that a former Committee would have determined his vote to have been bad on the same grounds as they determined that of Sir J. Macdonald? The rejection of that vote is a mere historical fact. If the reasons were known it might indeed serve as a precedent in cases, where they were shown to apply; here however no such application is made out. The barrister constituting a court under the Reform Act for the purpose of adjudicating upon what names are to be inserted in, and what are to be rejected from the list of voters, must be presumed to have acted rightly in admitting this vote, unless good reasons to invalidate his

decision can be brought forward. No such reasons have been adduced; and it is to be hoped that the Committee will not therefore disturb his decision, and will suffer this vote to continue on the poll. Little weight can be given to the decision of the assessor, against which a petition was presented, which would have been prosecuted had it not been for the death of Mr. Ogle.

The Committee, by their chairman, informed the counsel, that they had unanimously come to the conclusion, that the vote of William Holdaway do stand on the poll.

Cases of the Cricket-field votes impugned on the ground of occasionality.

The Committee then proceeded to investigate the other cases of the Cricket-field votes. The facts relating to all of them were nearly the same, but were not all proved at the same time, or upon the same votes. One of them, in consequence (it is presumed) of want of sufficient proof to affect its validity, was held good; two others were ordered to be struck off the poll, and after the decision of the last of these, the counsel for the sitting member abandoned the defence of the four remaining, which were consequently also ordered to be struck off the poll.

The principal facts relating to all of them were, that on or about the 30th of June 1830, when a general election was expected, the late King having died on the 26th of that month, a prospectus was issued for the forming of an association to be called the "Petersfield Improvement Association," which was, however, distributed only (as it was contended on the one side, and disputed on the other) amongst the persons of opposite principles in politics to Mr. Jolliffe. A meeting, which appears to have been a private one, was held, and managers of this association were appointed, and the Cricket-field was then purchased of Mr. Jolliffe's late steward for 1,000 *l.*, which was paid by a check of the managers on the Petersfield Bank, of which he was the principal proprietor. At that time the funds of the

association did not amount to 1000 *l.*, as appeared by the bank books, which were produced. These funds had been principally supplied by the managers of the association, who banked with the Petersfield bank, and drew checks to the amount of the number of shares which they took. Some part of them had been supplied by persons who had taken shares in London, Godalming and Midhurst; the money received from the latter place was however subsequently returned, and an entry made in the books that it had been paid in by mistake. At the election following, on the 30th and 31st of July 1830, deeds of assignment of shares in this association were kept at the committee-room of Lord Porchester and Mr. Ogle, and were parted with to their friends in large numbers, for a consideration the amount of which did not appear in evidence. Directly they were disposed of, the possessor of them went and tendered his vote for Lord Porchester and Mr. Ogle. They were, however, all refused by the returning-officer. There was a meeting of the managers of the association on the 4th October 1830, in Petersfield, when resolutions were entered into to get in the accounts from the bankers of the association at other towns, and to let the field to a person of the name of Chase, on condition that he should give it up whenever he should be required. Nothing appeared to have been done towards carrying into effect the professed objects of the association since that time. The votes in respect of shares in it were tendered at the election of 1832, and rejected by the assessor. The field had ever since the formation of the association remained in pasture, but just before the last election a board had been put up on it, stating that it was to be let on building leases. Since the 4th October 1830, Chase's cattle had been turned out upon it. The poor and highway rates and tithes had been always paid by the late steward of Mr.

Jolliffe, its former possessor. Although the price for which it was stated to have been sold to the association was 1,000 *l.*, the value was agreed by all the witnesses not to exceed 400 *l.* It contained about 3 acres 33 rods, although in the deed it was stated to contain 5 acres; and it was surrounded by waste lands, over which was the only entrance to it from the highway. At the election in 1820, a Mr. Labbington voted for it, and the late steward in his examination stated, that he had conveyed it to him for their joint lives in order to make a vote out of it at that election, and that no reconveyance had ever been made from Labbington to the association, but he said he considered that conveyance to have been void as against subsequent purchasers for a valuable consideration by the 13th of Elizabeth, no consideration having been paid for it.

Mr. Harrison, Serjeant Merewether, and Mr. Follett,

On this state of facts, contended that all these votes were invalid. It was doubtful whether any consideration ever actually passed in any instance; if it did, it was well known, under the old system of electioneering, that the money was frequently given to the voter to purchase his qualification the instant before he paid it. In regard to the payment to the steward by drafts upon his own bank, it was clearly a mere transfer of entries from one side of an account-book to the other, and no money ever actually passed. They enlarged also on the value and situation of the field to show that the whole invention of the association was a mere scheme for the fabrication of votes, without any intention of even carrying any of its professed objects into execution. Wherever it was plainly shown that votes were originally occasional in their creation, they had always been decided to have been bad under the ancient law of Parliament, as was shown by the cases of *Weymouth*,

Melcombe Regis (*l*), and *Hazlemere Onslow* v. *Rapley* (*m*), and more particularly the case of *Callington*, in April 1821 (*n*), where the consideration-money was proved to have been actually paid, and yet the deeds having been executed only a few days previously to the election, the Committee held the votes to have been bad.

Mr. Pollock and Mr. Serjeant Heath:

Insisted upon the general circumstances of the case as showing that there was no fraud in the original institution of the association, and that although part of the intention of the framers of it might have been, as indeed it was admitted by them in their evidence, to enlarge the constituency of the borough, yet still they had a *bonâ fide* intention of building, and a hope of deriving profit from the scheme. The buying a piece of land for the purpose of procuring a vote did not impeach the validity of the vote, unless some circumstance of fraud appeared to taint the transaction. It was well known that many persons bought small parcels of land in order to become freeholders of counties, and yet no one had ever thought of questioning their votes. Granting however, that the original formation of the association was for the purpose of creating occasional votes, still a knowledge of that intention must be brought home to each individual voter, or else he must be presumed to have purchased his share *bonâ fide*, and therefore to be entitled to his vote. They also endeavoured to distinguish the present case from those cited on the other side, and referred to that of *Oakhampton* (*o*) to show the very great unwillingness of Com-

(*l*) 13 June 1714, and Rogers on Elections, p. 94.

(*m*) Lord Somers' Tracts, vol. 1, p. 374; 9 Journals, p. 650, and Heywood on Borough Elections, pp. 337, 344.

(*n*) This case was first heard before a Committee, whose report is to be found in Journals, vol. 75, p. 301; and afterwards before a Committee of Appeal, whose report is stated in Journals, vol. 76, p. 366. It was from MSS notes of the proceedings before this latter Committee that the counsel quoted.

(*o*) 1 Peck, 360.

mittees in former instances to presume occasionality (*p*).

March 4. Upon the abandonment of the Cricket-field voters, the petitioner stood upon the poll five a-head of the sitting member. According to the usual method of proceeding in cases of scrutiny, it consequently became incumbent upon the sitting member to strike off that number of the votes for the petitioner. The first case proceeded upon was that of a voter of the name of Cookson. A notice of objection to his being retained in the lists had been given to the overseers in the manner directed by the 47th section of the Reform Act, and according to the form marked out in Schedule (I.) No. 5, in all respects, except that the place of abode of the objector was not stated. The overseer, to whom the objector was well known, received it, and inserted the voter's name in the list of objected voters. The objector afterwards discovered the omission, and persuaded the overseer to let him insert his place of abode in the notice. When the case came on before the revising barrister he decided that the notice was bad, and refused to enter into the case.

Cookson's case. Place of abode of objector not necessary to be inserted in the notice of objection. *See however the Bedford case, post.*

Merewether, Serjt. (*q*):

Now objected to the entering upon this case because the barrister had not decided upon it, and had no jurisdiction to have done so, since no such notice of objection as the Reform Act required had ever been given to the overseer. In the form given by the statute the place of abode was stated, and it was obviously most necessary that form should be followed in order that

(*p*) The statement and arguments upon this part of the case, which lasted four days, are given in a very compressed form, as, on account of the alteration of the law, it is not probable that they will be found useful in any subsequent case.

(*q*) The counsel at the commencement of this argument proceeded also to consider the question, whether the Committee could take cognizance of votes not discussed before the barrister. By the desire of the Committee they afterwards confined themselves to the question of the validity of the notice.

the person objected to might be enabled to see whether the objector was a person entitled to object, for it was not any one who had the power to do so. By the 47th section that power was only conferred upon those whose names were inserted in the list of voters. If, therefore, the objector was not included in that list, the person objected to would not be obliged to attend with his witnesses before the barrister to prove his right; if he was included in the list, an explanation might be given before the revision, which might satisfy him and save the attendance of both parties. The circumstance of the objector in this case being known to the overseer was of no consequence, the same rule must be applied to all cases, and in many, if not most, it must happen that the objector would not be known to the overseer.

Mr. Pollock:

It never could have been the intention of the Legislature that the decision of a revising barrister that a notice was informal should preclude a Committee from examining the validity of a vote: if such, however, was the intention, the notice here was sufficiently formal to render it indispensable for the overseer to insert the name of the person objected to in the list of objections. The precise form in the schedule was not required; all that the 47th section directed was, that the objector should "give, or cause to be given, a notice in writing, according to the form numbered 5 in the Schedule (I.), or *to the like effect*, to the overseer." It was quite clear that the notice here given was to the effect, if not in the form, of that in Schedule (I). The Act was, besides, framed with especial care that no informality of this description should vitiate its legitimate operation; for in the 79th section there was a proviso, "That no misnomer or inaccurate description of any person or place named or described in any schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in anywise prevent or abridge the

operation of this Act with respect to such person or place, provided that such person or place should be so designated in such schedule, list, register or notice, as to be commonly understood." The only object of the place of abode being inserted in the form was, that if the objector was personally unknown to the overseer he might inquire whether he was entitled to object. Here the overseer knew the objector, and acted perfectly right in inserting the name of the person objected to in the list of objections. The consequence of such technicalities beyond either the spirit or the wording of the Act being sanctioned by the Committee would be all kinds of manœuvering and chicanery; informal notices of objection would be purposely sent to the overseers, in order that those who *bonâ fide* intended to object might be induced not to put in their notices, upon hearing that other notices had been already delivered. In truth, however, the barrister was not authorized to refuse to hear these objections; all that he had to look at was the list of objections, which by the 50th section the overseers were directed to deliver to him. The Act contained no direction to the overseers to produce either to the barrister or any one else the notices of objection. Had it been in the contemplation of Parliament that these notices were to be the subject of discussion in the Barrister's Court, it would have required the overseers to have preserved them carefully on a file instead of keeping a copy of the names of the persons objected to, and the omission of such a provision showed that it was meant that the insertion of the names in this list should be confided to the overseers, and a breach of that confidence was guarded against by the pecuniary penalties provided by the 76th section.

Merewether, Serjt. in reply:

The clause at the end of the 79th section was intended to provide for all casual mistakes and unimportant errors; for instance, a wrong number of a house in a street, as

No. 19 for No. 20, the contraction of a name, as Wm. for William, or the mis-spelling of a place, as Casehorton for Carshalton; but it could never be held to include so important an omission as that of the place of abode in a notice. The clause, besides, contained no provision at all for an omission; the words "like effect" in the 47th section, could not in any way be strained to a construction which would leave out one of the integral parts of the notice. With regard to the arguments drawn *ab inconvenienti*, the only answer was, that if any danger was to be apprehended from jobbing and unfair conduct on the part of the overseers, the placing the formation of the lists of objection into their hands without any check or control, except the chance of an action under the 87th section, would be the most certain means of producing it.

In answer to a question by the Committee, Serjeant Merewether stated, that although there was no express provision in the Act to oblige the overseers to produce the notices to the barrister, yet from the general frame of it he was bound to do so, and indeed the barrister could not proceed without them.

The Committee determined that the counsel for the petitioner should proceed with his case.

Cookson's case. Want of possession of the freehold, coupled with an admission at a former election that his vote was bad, held sufficient to destroy his vote, although a beneficial interest was not requisite for the right to vote in the borough.

Cookson voted for a freehold house. The objections delivered in against him were, no beneficial freehold, no *bonâ fide* interest. It was proved that the tenant of the house had for 22 years paid rent to another person, and considered him as his landlord; and that Cookson had, as he was going before the assessor at the election of 1830, told a former steward of the landlord's that "he knew his vote would not pass," but that the assessor then had allowed his vote, and that he had voted at many previous elections.

Heath, Serjt.

Now contended, that on the same principles as the Cricket-field voters had been decided upon, this vote

which was of the description generally called "Faggots," must also be struck off the poll. There was a *primâ facie* case against its being a *bonâ fide* interest, and it was incumbent on the other side to disprove it if they could. He also, with regard to the admission of Cookson during the election of 1830, referred to the resolutions of the Leominster Committee in *Weaver's case* (*r*), that a declaration of a voter which tends to destroy his vote, is admissible, whether made before or after the election, unless it goes to affect him with penal consequences.

Merewether, Serjt.

Argued that no case had been shown that the freehold did not belong to the voter. It was not at all necessary that he should have a beneficial interest in it, for the possessor of a stone in the market-place would have a good vote under the old franchises of Petersfield; he might have let off the whole beneficial interest to the landlord of the house, and yet have retained himself the legal freehold, which was all that was requisite. His having voted before at other elections created a strong presumption in his favour, and established a strong distinction between his case and that of the Cricket-field voters, who had never exercised that privilege.

The Committee determined "that Cookson's vote should be struck off the poll."

The counsel for the sitting member then abandoned the case of Twyford, and the counsel for the petitioner that of Ayling, which were accordingly also ordered to be struck off the poll, as was that of Thomas Judd, whose vote was objected to on the part of the sitting member, and who was proved to have received parochial relief in money.

Crockford's case.

The next case called on was Thomas Crockford's, who was objected to on the part of the sitting member.

(*r*) 2 Peck. 395.

No objection had been taken to his name in the overseer's list, and the revising barrister had consequently made no decision upon it.

Committees are not empowered to enter into any inquiry respecting votes which have not been under the cognizance of the barrister.

Merewether, Serjt. (*s*) objected to entering upon this case.

The object of the Reform Act was to diminish the expense of elections: for this purpose it created the court of the revising barrister with full power to decide on all objections and claims. From the lists signed by that barrister the register of electors to vote at any election for the succeeding year is to be formed. At the poll certain questions only are to be asked of the persons included in such register. The 59th section gives the power to persons whose names have been omitted from the register, in consequence of the decision of the barrister who shall have revised the lists from which the register shall have been formed, to tender their votes at the election; and the 60th section gives to a petitioner the power to impeach the correctness of the register of voters in force at the time of the election, by proving that in consequence of the decision of the barrister who revised the lists from which it had been formed, the name of any person who voted had been improperly retained in it, or the name of any person who tendered his vote improperly omitted from it. This latter clause would have been unnecessary if it had been intended that the former jurisdiction of the Election Committees of the House of Commons over every vote that came to the poll should continue unaltered. The words "in consequence of the decision of the barrister," at any rate would be perfectly nugatory; it is plainly, however, the object of the statute to create a new court to decide upon the elective franchise, and the words of this clause, by which an appeal to the Committees of

(*s*) The greater part of this argument had been used in opposition to the entering upon Cookson's vote, and was not again repeated. It is inserted here, however, for the sake of distinctness.

this House is given from the decisions of that tribunal, are actually and substantially exclusive of their jurisdiction in all other cases. This is the construction which has been always put on statutes of this description. In Bacon's Abridgment (*t*) it is stated, "that it is in general true, that if an affirmative statute which is introductive of a new law direct a thing to be done in a certain manner, that a thing shall not, even although there are no negative words, be done in any other manner." Here an act directs that the barrister shall, if there is an objection made to a vote, inquire into its validity; how then can a Committee, where there has been no objection, enter into a similar inquiry? In a late case (*u*) before the Court of King's Bench, where a question of this nature arose, Lord Tenterden laid down the law in these terms: "Where an act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that the performance cannot be enforced in any other manner." It would thus be quite at variance both with the spirit in which the Reform Act was conceived, and the general rules of construction of statutes, were the Committee to assume jurisdiction over the votes not previously submitted to the barrister's decision. The only clause in the Act on which such a jurisdiction could be supported was the 79th, which declared "that all laws, statutes and usages then in force respecting the election of members to serve in Parliament should be and remain in full force, except so far as any of the said laws, statutes or usages were repealed or altered by that Act, or were inconsistent with the provisions thereof." This clause, however, which was common in all public and private Acts, was never held to apply when, as at present, those laws and usages endeavoured to be preserved were at direct variance with its express provisions. Should, indeed, the

(*t*) Tit. Statute G. (*u*) *Doe* v. *Bridges*, 1 Barn. and Ad. 859.

Committee be of a contrary opinion, the whole of the machinery erected by the Act could only tend, in direct opposition to its intention, to multiply and increase the expenses of electioneering contests. The candidate who at a considerable outlay had succeeded in a contest for a county, would find himself obliged at a still larger cost to fight his battle over again before a Committee, or to yield his seat to some more artful or experienced candidate, who would come forward at the last moment to dispute the validity of votes which had never been impeached or disputed before the courts of the revising barristers. Upon every ground of just construction of the clear intention of the statute, and the evils that would arise from an opposite interpretation, he trusted that the Committee would hold themselves precluded from entering upon the question of this vote.

Mr. Pollock:

Previously to the passing of the Reform Act, the Select Committees of the House of Commons had undoubted power and jurisdiction to decide upon the validity of every vote that was tendered at the poll. The question now therefore is, whether that power has been taken away from them by any part of the Act. Every section of it has been cited from which ingenuity could hope to extract an argument to abridge the ancient jurisdiction of committees; not a single passage can be found in direct words to deprive them of their former rights. A kind of syllogism, however, is drawn in these terms: Committees have by the Act a power given to them to revise votes that have been discussed before the barrister; they have no power given to them by the Act to revise votes that have not been discussed before the barrister, therefore they have no power to revise votes that have not been discussed before the barrister. Without stopping to demonstrate the logical inaccuracies of such reasoning, it is a sufficient answer to say, that it was not necessary to give expressly by the

Act the power of discussing these votes to committees, because they had that power without it; but it was thought necessary, when a new court was created for the purpose of deciding upon votes, also to give expressly to committees the power of examining into cases which had been previously decided by that tribunal, in order to prevent any doubts that might arise as to its decisions being conclusive. In the same spirit, a power of tendering at the poll the votes which had been rejected by the barrister was given; for without it, committees would have been unable to adjudicate at all upon cases rejected by the barrister. But it never was the intention of Parliament to place the whole of the former power of Committees into the hands of the overseers and town clerks in all cases where private persons could not be found ready to come forward and take upon themselves the invidious character of objectors, for the barrister can only decide upon cases that are brought before him by objections or claims. The latter is not a mode in which many cases will be placed under his notice, for the fault of overseers, as far as has been yet remarked, has been less in improper omissions than in improper insertions. Instances were notorious where residents at 100 miles distance, paupers and children, had been placed on the list, been unobjected to, or not objected to according to the forms of the Act, and had actually come up and polled, and by their suffrages returned candidates in direct opposition to the wishes and votes of the large body of *bonâ fide* constituents. It is a well established rule of law, that an ancient jurisdiction shall not be taken away by any statute creating a new one which did not contain express negative words, which it is needless to say did not exist in the Reform Act. The case of *Doe* v. *Bridges* (*x*) has no bearing on the subject. Admitting

(*x*) ubi sup.

it to be true, as stated by the Lord Chief Justice, that where an Act creates an obligation, and enforces the performance in a particular manner, it cannot be enforced in any other manner, does the Reform Act create an obligation on Committees? It is clear that all that it does is to bestow on them an additional power. The passage cited from Bacon's Abridgment is still less applicable to the present question. It is true that where an affirmative statute introductive of a new law directs a thing to be done in a certain manner, that it shall not, although there are no negative words, be done in any other manner; but here we do not ask that any thing directed by the Reform Act should be done in a different way from what its provisions direct. All that we ask is, that a class of votes respecting which it contains no provisions should be dealt with and adjudicated upon in the manner directed by the Grenville Act, and the various other Acts by which the present tribunal of Select Committees of the House of Commons is constituted. So far from entrenching upon the powers thus bestowed upon Committees, the 76th section of the Reform Act contains an express enactment that "All laws, statutes and usages then in force respecting the election of members to serve in Parliament should be and remain in full force, except so far as any of them were repealed or altered by or were inconsistent with the provisions of the Act." The Acts conferring the powers of Committees over every vote tendered at the poll are not repealed, far less are they inconsistent with the Reform Act, which can only be beneficially carried into operation and enforced by their existence. Upon every ground therefore of expediency and of construction according to the rules of law, it is to be hoped that the Committee will allow the votes not decided upon by the barrister to be discussed before it.

Merewether, Serjt. in reply:

It would be inconsistent with the whole spirit of the

Reform Act, to hold that a committee had power to enter upon this class of votes. Who would take the trouble of objecting to votes, or defending them before the barrister, if they could without previous discussion be all brought as in former times before the Committee? The whole system of registration would be a delusion, and a delusion of the most expensive description. If the intention of the legislature had been only to prevent the barrister's decision from being conclusive, it would have been easy to have expressed it; but from the whole wording of the Act it was evident that their view was to diminish expense, by giving to every constituency in the kingdom a tribunal upon the spot, where every vote might be investigated with less expense and with more accuracy than under the former system. If parties did not choose to avail themselves of the means which were now placed in their power of disputing every vote in their own neighbourhood, where witnesses and evidence of all kinds were at hand, they must be held concluded by their own laches from coming forward to do so at the last moment before a committee. The interpretation that was contended for was calculated to render the Act the means of doubling the expenses of elections, and he therefore trusted that a committee would not put an interpretation upon it so utterly at variance with its spirit.

The Chairman delivered the decision of the Committee in these terms: "The Committee are of opinion that they are not empowered to enter into any inquiry respecting votes that have not been under the cognizance of the barrister."

Mr. Pollock, for the sitting member, then abandoned the case.

The Resolutions of the Committee were,

That J. G. S. Lefevre, Esq. was not duly elected.

That H. Jolliffe, Esq. was duly elected, and ought to have been returned.

That neither the petition nor the opposition to it appeared frivolous or vexatious.

That the said Committee have also to inform the House, that they have altered the poll taken at such election, by striking off John Robson, William Binstead, William Wild, William Southen, William Garthorn, George Golding, James Cookson, Charles Edward Twyford, William Ayling and Thomas Judd, as having no right to vote (*y*).

(*y*) This latter part of the resolution, which is a variation from the former form, is in accordance with the words of the 60th section of the Reform Act.

CASE III.

CITY OF OXFORD.

The Committee was appointed on the 26th of February 1833, and consisted of the following Gentlemen:

Sir Thomas Fremantle, M. P. for Buckingham, (*Chairman*).

Benjamin Handley, Esq. M.P. for Boston.
W. R. Clayton, Esq. M. P. for Marlow.
Lord Viscount Villiers, M. P. for Honiton.
The Hon. C. A. Pelham, M.P. for Lincoln Co., Parts of Lindsey.
John Hope Johnstone, Esq. M. P. for Dumfries-shire.
Josiah Guest, Esq. M. P. for Merthyr Tydvil.
W. Pinney, Esq. M. P. for Lyme Regis.
General Sharpe, M. P. for Dumfries, &c.
Richard Walker, Esq. M. P. for Bury, (Lancash).
William Verner, Esq. M. P. for Armagh Co.

Petitioner:—William Hughes Hughes, Esq.
Sitting Members:—J. H. Langston, Esq., and Thomas Stonor, Esq.
Counsel for the Petitioner:—Mr. Harrison, The Hon. C. E. Law, and Mr. Walsh.
Agent:—Mr. Chavier.
Counsel for Mr. Stonor:—Mr. Serjeant Merewether, Mr. Follett and Mr. Charles Saunders.
Agent:—Mr. Rose.

Statements of the Petition. The names of the candidates.

THE petition stated, that at the last general election for the city of *Oxford*, James Haughton Langston, Esq., Thomas Stonor, Esq., Sir Charles Wetherell, Knight, and the Petitioner, were candidates to represent the said city in Parliament.

That many persons who were not entitled or qualified as freemen, or in respect of property, or occupation, or residence, to be inserted in the register of the electors for the said city, did nevertheless procure their names to be inserted in the lists to be delivered to and revised by the barrister or barristers appointed to revise such lists for the said city.

That persons not entitled procured their names to be inserted in the list of voters.

That many other persons who were not qualified or entitled as aforesaid to be inserted in such lists, were improperly inserted therein by the persons authorized to make out such lists.

That many others not entitled were improperly inserted in lists.

That many of such persons were by the said barrister or barristers retained on such register or registers, in many cases, in consequence of no objection being made to the insertion of such unqualified persons in such lists, and in many other cases on account of alleged or supposed irregularities in the form or manner of making objections.

That many of such persons were retained on the register for want of objection.

The petition then contained similar allegations with respect to the insertion of the names of persons subject to legal incapacities, and disqualified by the receipt of alms or parochial relief.

Similar allegations as to persons subject to legal incapacities.

It then stated that many of such persons so not entitled or qualified as electors, and many persons who were so legally disqualified as aforesaid, did vote at the election in favour of the said Thomas Stonor.

That many of such persons voted for Mr. Stonor.

That many persons who became disqualified subsequently to the formation of the register by the receipt of bribes, or promises of money or bribes, or other rewards, for giving their votes at the said election, or by receiving of alms or parochial relief, or by having parted with the property in respect of which they were qualified, or by removal of their occupation, or residence or otherwise, were allowed to vote.

That many persons who became disqualified subsequently to the formation of the register, by receiving bribes, &c. or parish relief, or by change of qualification, were allowed to vote.

That by reason of the premises the said Thomas

That Mr. Stonor

thereby obtained a colourable majority.

Stonor obtained an apparent and colourable majority of votes over the petitioner.

That Mr. Stonor, by himself, his agents, &c. had been guilty of treating and bribery, and had obtained votes thereby.

It then alleged various acts of treating and bribery by Mr. Stonor, his agents, friends and managers, and by persons employed on his behalf, and that votes were obtained thereby.

Prayer: That the House would direct the petitioner's name to be inserted in the return, or would declare Mr. S's election void.

And it prayed that the House would take the premises into consideration, and declare that the petitioner was duly elected, and ought to have been returned to serve in this present Parliament for the said city, and direct the clerk of the crown to erase the name of the said Thomas Stonor from the said return, and insert therein the name of the petitioner, or otherwise to declare the said election and return of the said Thomas Stonor to be wholly void.

It appeared from the evidence that public-houses and beer-shops had been opened during, and for some months previous to the election; that at these houses the voters in Mr. Stonor's interest received refreshments; that a list of them, to the number of 113, had been printed; that of this list, which was headed "List of public-houses at which the friends of Mr. Stonor are requested to meet previously to proceeding to the poll," 300 copies were struck off; that refreshment tickets to the number of 200 were printed; that these tickets were signed in the committee-room of the sitting member, the one produced in evidence was signed "W. P. Bartlett, for J. Turner" (*a*). That Mr. James Turner, who

(*a*) Bartlett was examined, and proved his having been employed by Mr. James Turner, "to answer any questions in the committee-room during Turner's absence." He also proved that Mr. Stonor was frequently in the room, and that there were a great many cards of the description of the one produced. The witness was proceeding to state what he had filled up, when Mr. Follett objected to the evidence.

Mr. Law said he was in the course of showing this man to be employed in filling up cards in the committee-room; he had shown Mr. Stonor to

was clerk to Mr. Morrell, an attorney and banker at Oxford, at a yearly salary of 80 *l.*, with perquisites amounting to about 20 *l.* more, was a member of the sitting member's committee, and was frequently in the committee-room attending to the business of the election, that he paid the bill for printing the tickets which he had ordered, and the list of public-houses, amounting, with charges for stationery, to above 90 *l.*; that he had also paid 50 *l.*, part of a disputed livery-stable keeper's bill, for the hire of carriages and horses on the nomination day and days of election. With respect to this bill, it appeared that the objection to its amount was made by Turner himself, and that on the party applying to the sitting member he was referred back, with the direc-

be frequently coming into the room, and that Turner was one of the committee. This was one of the tickets ordered by Turner.

Mr. Follett, in support of his objection, denied that any act done in committee-room was necessarily evidence against the candidate. On the second Dublin Committee, Mr. Harrison and himself contested that point. There bribery had taken place in the committee-room. The committee decided against admitting the evidence, on the ground that the candidate must first be shown to be connected with the act. The members of a committee are not agents of the candidate. If held otherwise, no man could keep his seat. The Dublin case was the last decision; all the modern cases have held that you must first show that the act to be given in evidence was authorized by the sitting member.

Mr. Law, in reply, cited *Ridler* v. *Moore* and *Francis*, Glo'ster Summer Assizes 1797, before Lord Kenyon (*b*), where an action was brought to recover a bill incurred during a contested election, and the question was, whether Messrs. Moore and Francis, the defendants and candidates, were liable for the acts of a Mr. Smith. It appeared that a committee, in their joint interest, had been nominated by Mr. Smith, who acted throughout the election as the agent of both. He paid some of the bills incurred, was consulted by the committee when any business was done, and was generally understood to be the leading man on the committee. Lord Kenyon held this to be proof of agency sufficient to affect both the defendants.

The Chairman communicated the following resolution of the Committee: Resolved, "that no evidence can be given of what passed in the committee-room without previous proof being given of the agency of the parties concerned."

(*b*) Clifford, 371.

tion "to settle it with Mr. Turner." It was proved that some of the non-resident freemen, who voted for the sitting member only, received at his committee-room, after voting, 2 *l.* each, and two 10 *s.* refreshment tickets; that in two instances refreshment tickets were converted into money the next day in the committee-room on the application of the voters, and that from two other voters a publican in the room bought their tickets at 9 *s.* each; that it being the usual practice (one witness speaking to his experience as a freeman of 20 years' standing), that two sovereigns and two 10 *s.* tickets should be given for a plumper, and one sovereign and one ticket for a split vote; the question of what would be given was seldom put by the voters before polling, as they relied on the custom, and "trusted to the honour" of the committee. In one instance, however, a freeman residing four miles from Oxford went to Mr. Stonor's committee-room, where he saw that gentleman, and told him he was a voter, and wished to know "who was to pay his expenses;" that Mr. Stonor referred him to the committee-room table, where he was told "to go and vote, and they would see it was all right;" that he voted for both the sitting members, and on his return to the committee-room, having inquired for Mr. Turner, he was informed by Bartlett, as he believed, from whom he received one 10 *s.* ticket, that Mr. Turner was not there, and that he must come again the next day, "when he would receive his expenses (*c*). When a voter received his "expenses" the sovereigns

(*c*) This person (Benjamin Kirry) having been questioned as to what passed the next day between a voter, Wm. Ayris, and James Turner, the question was objected to by Mr. Serjeant Merewether, and the Committee decided against receiving evidence of a conversation between Ayris and Turner in the committee-room, until Turner was proved to be an agent of the sitting member. This resolution was afterwards extended, on the examinations of Henry Hands and Wm. Ayris, both freemen, to questions the object of which was to show a payment by Turner to the witness.

were laid on the committee-room table, the voter was called up to it, and was permitted to take them, Turner being himself at the table.

After the election, a notice was pasted on a window over the door of the house where the committee had been held, directing "all persons having claims on Mr. Stonor's committee, to deliver the same at Mr. Turner's, No. 3, Beaumont-street, by Tuesday next; it was dated "Committee Room, Dec. 14th. 1832."

The payment of the sum of 4,800 *l.* between the 14th September 1832 and the 26th of February last, was traced from the sitting member to Mr. Turner, by the production of cheques drawn in his favour on the London and Reading bankers of Mr. Stonor, which were cashed by Messrs. Cox & Morrell of Oxford (*d*).

The counsel for the Petitioner:

Argument for the petitioner.

By the petition this case is divided into two propositions, the bribery and treating, and the scrutiny. The ordinary course of proceeding before committees is to take the general question first.

By the common law bribery was an offence. The statute 2 Geo. 2, c. 24, commonly called the Bribery Act, did no more than affirm and aid the common law by the penalty imposed by it; but it is not on that Act that the House proceeds with reference to cases of this description. At the commencement of every session a resolution is passed: that resolution was first passed in 1700–1701 (*e*), and it has

(*d*) Shortly after this fact was put in, a witness, Charles Wall, a pauper residing in the House of Industry, who voted for the sitting member, having stated the receipt by him of a sovereign from James Turner three days after the election, and an objection having been taken by Serjeant Merewether to evidence of Turner's acts, the Chairman said, "the question is, has agency been now proved?" The decision of that question was then left to the Committee by consent without argument; the Committee resolved, "That the course of examination now objected to may be pursued by the counsel for the petitioner, the agency of Turner having been proved to the satisfaction of the Committee.

(*e*) Resolved, That if it shall appear that any person hath *procured himself to be* elected or returned a member of this House, or

been amended by a resolution of the present session (*f*). In the year 1677 the resolution against treating was passed, which was followed up by the 7 Will. 3, c. 4; by that resolution (according to the abstract of it in Rogers (*g*), for a candidate to give any person having a voice at an election meat, drink, or present or gift, after the teste of the writ, was declared to be bribery, and to be a sufficient ground for avoiding the election as to every person so offending.

We prefer that the adjudication of the Committee should unseat the sitting member on the ground of treating; here there has been a payment to voters, as a compensation for loss of time. The resolution of the whole House in the *Grantham case*, in 1820, was in these words: "That the practice of paying money to out-voters at the elections of members of this House, under colour of indemnifying them for loss of time, is highly illegal, subversive of the freedom of election, and tending to the most dangerous corruption (*h*). In the *Ipswich* (*i*) and *Herefordshire* (*j*) cases, travelling expenses must have been considered illegal. But whatever may be the bearing of other decisions, the Reform Act has put travelling expenses totally out of the question, having provided that the freeman, to be a voter, shall not be resident more than seven miles from the polling place (*k*). The payment in this case was by an agent, but the principal is bound by the acts of his agents. In *Felton* v. *Easthope*,

endeavoured so to be, by bribery, or any other corrupt practices, this House will proceed with the utmost severity against *such person*.

(*f*) Resolution of 13th Feb. 1833. Resolved, That if it shall appear that any person *hath been* elected or returned a member of this House, or endeavoured so to be, by bribery or any other corrupt practices, this House will proceed with the utmost severity against *all such persons as have been wilfully concerned in such bribery or other corrupt practices*.

(*g*) Rogers, 215.

(*h*) See 75 Journals, p. 435. This resolution was carried by 66 to 60. Dr. Phillimore and Mr. Wynn being tellers for the Ayes, and Mr. Abercromby and Mr. Warren for the Noes.

(*i*) 1 Luders, 21.

(*j*) 1 Peck. 184.

(*k*) 2 Wm. 4, c. 45, s. 32.

before Lord Tenterden (*l*), the action was for penalties for bribery; the agent by whom the acts of bribery were committed being the principal witness. The Chief Justice, in his charge to the jury, said, "it was perfectly true, if an agent who may be employed for various purposes, to canvass, &c. does, without the knowledge, privity, or approbation of the principal, promise a sum of money, the principal is not liable to be sued under this Act for the penalty. No person is liable to be sued for that penalty, unless that which was improperly done was done by his authority. If an agent bribes voters, with or without the knowledge and direction of the principal, it will void the election; the principal is to that extent liable, but not so in an action of this sort. It must be proved to be done with the knowledge and authority of the principal."

The giving of refreshment-tickets to voters has been before decided to be illegal; it vacated the elections of the members in the *Herefordshire* (*m*) and *Berwick* (*n*) *cases*, where, as in the present case, the tickets were converted into money. In the *Middlesex case* (*o*) Sir F. Burdett proved the distribution of refreshments ordered by the agents of Mr. Mainwaring and given to voters, and the Committee resolved that Mr. Mainwaring was incapable of sitting, though they had found, that he ought to have been returned. There the expenditure was by no means lavish, nor do we know of any particular cases here, where the expenditure has been lavish; but we have proved that nearly 5,000 *l.* passed into the hands of Turner; that a cheque for 500 *l.* is cashed on the 8th of December, partly in notes; that of the remainder (105 *l.*) Turner receives 100 sovereigns and 5 *l.* in silver; and there is one feature in the present case much relied on in the *Herefordshire case*, the conversion of the tickets into cash, and the gift of two

(*l*) Rogers on Elections, 220.
(*m*) 1 Peck. 184.
(*n*) 1 Peck, 402.
(*o*) 2 Peck. 81.

tickets to the voter who gave a vote for the sitting member only (*p*).

Argument for the sitting member.

The Counsel for the sitting member:

The arguments of counsel in cases have been cited instead of the decisions in those cases. If there were authorities against the sitting member, his answer would be, that no cases can prevail against the express words of an Act of Parliament. Before the teste of the writ it is clear law that no person can be legally complained of for treating. The offence must also have been committed "in order to be elected, or for being elected." There must have been a providing by the candidate, or by some person legally authorized by him. In *Hughes* v. *Marshall* (*q*) the defendants, who were supporters of Mr. Slaney at the election for Shrewsbury in July 1830, had, during four days of the election, given orders, either personally or by written tickets, to the plaintiff, an innkeeper, to supply with provisions, &c. upwards of 100 voters in the interest of Mr. Slaney, and also other persons who were not voters, and had likewise themselves taken refreshment at the plaintiff's house. The bill amounted to 23 *l.* 18 *s.* 6 *d.* The house had been opened by Mr. Slaney's committee after the polling commenced. A verdict having been found for the plaintiff, on a rule for a new trial, which was discharged, Lord Lyndhurst, C. B., after citing the words of the Treating Act (*r*), says, "Now it is perfectly clear from these words, that to bring a case within the above provision, the acts mentioned in the statute must be done by the candidate, that is, not by him only in his own person, but by him or by some person acting for him and on his behalf." His Lordship says further, "In the first place, it does not appear that the parties to whom these refreshments were furnished had not previously voted; in the next place, it does not appear

(*p*) See observations in *Durham case*, 2 Peck. 181.

(*q*) 2 Crompt. and Jerv. 118.

(*r*) 7 Wm. 3. c. 4.

whether they resided in the town or came from a distance, which might make it requisite for them to have moderate refreshment." To constitute the offence of bribery it is necessary that the payment or promise should be made previous to voting. In *Lord Huntingtower* v. *Gardiner* (*s*), which was an action for penalties for bribery at an election, the defendant had received 30 *l.* after the election for having voted for two candidates; but no evidence whatever was given of a pre-existing agreement, and the jury by their verdict negatived any previous agreement. The Court of King's Bench held that such a payment was not within the Act. Justice Holroyd said, "The words of the Act are evidently prospective, and must be construed as if they had been 'in order to give,' or 'in order to forbear to give;' the section provides not only for receiving a reward, but for making an agreement for the receipt of money, although it be not paid till after the election; but the words of the Act do not go beyond that; we cannot, therefore, infer that a voluntary payment after the election comes within their meaning." *Felton* v. *Easthope* (*t*) has been much questioned by parliamentary lawyers. In the *Herefordshire case* (*u*) the circumstances were unlike the present, the voters there being in some instances directed to go to the public-houses by the candidate himself; in others, by persons employed in his interest. In the *Berwick case* (*x*) each voter who promised his vote received four 5 *s.* tickets. It frequently happened that the relations of the voters had the disposal of their votes for them, and received the tickets on their account. No such thing is to be found here.

The *Radnorshire case* (*y*) is an authority for the sitting

(*s*) 1 B. & C. 297.
(*t*) Rogers on Elections, 220.
(*u*) 1 Peck. 184.
(*x*) 1 Peck. 402.
(*y*) 1 Peck. 495.

member, for there the member was declared duly elected. In the *Middlesex case* (*z*) the charge of treating was so clearly made out that counsel did not address the Committee upon it. There is no better ground of distinction than that afforded by the *Durham case* (*a*), where the refreshments were given to resident voters. None of the cases cited by the counsel for the petitioners at all affect the present: here, as in *Lord Huntingtower* v. *Gardiner* (*b*), the payment has been proved to have been made after the vote without a previous promise. With respect to the expenditure which has taken place, it is admitted that large sums have been expended by the sitting member before the teste of the writ. The dates of many of the payments are from August to the 2d of November. On the 8th of December 500 *l.* is paid. Now on the day of nomination there was a procession, and much expense was incurred; but this was not an illegal expense. Then with respect to the argument founded on the Reform Act, there is no reason why voters may not be absent at a distance at the time of election. When the *Dublin* (*c*), the *Taunton* (*d*) and the *Wells* (*e*) *cases* are called to remembrance, it is somewhat surprising to hear the fact much insisted on of a cheque cashed some days before the election in 100 soverigns and 5 *l.* in silver. No draft appears to have been drawn or paid during the election, a circumstance which, in the *Taunton case*, was much dwelt upon. Some legal expenses have been here incurred. No case has been cited to show that giving refreshment to non-resident voters is illegal. Here there is no proof of refreshments having been given to resident voters. The sums paid to Turner were for the purpose of discharging all legal expenses, and a notice for claimants so publicly given as that in evidence is

(*z*) 2 Peck. 31.
(*a*) 2 Peck. 177.
(*b*) *ubi supra.*
(*c*) Minutes 1st August 1831.
(*d*) Minutes 23d Feb. 1831.
(*e*) 82 Journals, 419.

a proof that Mr. Stonor was satisfied that no illegal expenses had been incurred. In the *Chester case* 4,000 tickets were issued: here only 200 were ever printed. In that case the tickets were current in the town, and paid as cash by publicans to their brewer, in satisfaction of a distress, as a security for a debt. They lay about the room in great numbers, and were distributed to resident voters. There General Grosvenor himself ordered up wine. Here the landlords had no order from the candidate: they opened their houses on their own responsibility. It is a strong argument in favour of the sitting member that no electors have been found to join in the petition; the united voice of the electors of Oxford declares they are satisfied with the election: *dum tacent, clamant.*

The Committee resolved, that a case of treating had been made out against the sitting member, Mr. Thomas Stonor. But it was intimated that the Committee would consider the terms in which their decision should be reported to the House.

That a petitioner who has proved an election to have been void on account of treating, may go into scrutiny with the view of establishing his right to the seat.

Mr. Walsh then submitted, that Mr. Stonor, being no longer a party to the cause, could not appear by his counsel, and cited the second *Canterbury case* (*f*). The circumstances of that case were as follow: There were two elections. At the first Mr. Baker, Mr. Sawbridge, Mr. Gipps and Sir John Honeywood were candidates. The two former gentlemen were returned. Against this return many electors in the interest of the other candidates petitioned. The petition charged the sitting members with having been guilty of bribery, treating, and other corrupt and illegal practices. The fact of bribery and treating was brought home to all the four candidates. The Committee determined "that neither Mr. Baker nor Mr. Sawbridge were duly elected. That the last election was a void election." On the second elec-

(*f*) Clifford, 861.

tion the same parties were candidates, and Mr. Baker and Mr. Sawbridge were again elected and returned. Against this second return a petition of electors was presented, setting forth the proceedings of the former Committee, and that the sitting members having offended against the standing order of the House of 1677, and the Act of the 7th Wm. 3. c. 4, by gross bribery, treating and corrupt practices, were by reason thereof ineligible to represent the city of Canterbury in Parliament on such renewed election.

It was proved that notice had been given, previously to the election, of the ineligibility of Mr. Baker and Mr. Sawbridge. The minutes of the former Committee were given in evidence.

The Committee declared Mr. Baker and Mr. Sawbridge not to be duly elected, and adjourned to the next day; when, after argument, the Committee determined, "That the counsel for the late sitting members be not permitted to bring evidence to disqualify George Gipps, Esq. and Sir John Honeywood, Baronet." Whereupon the counsel for the sitting members withdrew, their clients being no longer parties to the cause.

Mr. Follett:

If the position, that Mr. Stonor is not entitled to be heard in answer to the scrutiny, were established, and the petitioner were allowed to go into it, the effect might be, that with only two votes he might succeed in showing himself entitled to the return. He has, however, no right to go into the scrutiny at all, because he has said that the election is void. In the *Colchester case* (*g*),

(*g*) 1 Luders, 415, 441.

The following MS. note by Mr. Luders on the *Colchester case* occurs in the copy of his work bequeathed by that gentleman to the Society of the Inner Temple. The Reporters are indebted to the kindness of Mr. Harrisen for a copy of it.

"In the pamphlets and arguments on the Middlesex election, which engaged parties so warmly after 1768, the cases of *Malden Bedford*, 21 Journ. 138, and *Lyme*, were all relied

after the Committee had determined that Mr. Potter's election was void for want of qualification, the coun-

on as cases in point in support of the doctrine of votes being *thrown away;* but *none* of them are so according to the reports in the Journals, or as I had said before of *Malden* and *Lyme*. In the *Bedford case* the resolution proceeded upon consent of parties, and does not appear thereby governed at all by this principle. Mr. Ongley, who had a majority, held a disqualifying office (and he was a petitioner too), and the other was seated by the House upon Ongley's declining to go on after the House had determined that he held a disqualifying office, which was the only point in dispute.

It is strange therefore that Dyson, in his pamphlet, "The Case of the late Election,&c. considered," should have relied on those cases for the point; as see in p. 38 of the book, and see 1 Junius, p. 1356; Glanv. 41; and 10 Journ. 287.

This case happened on the Canterbury petition in the spring of 1797. There were petitions from electors only on the merits of the election. The Committee determined that the sitting members were ineligible for bribery at the former election, and likewise that they should not be permitted to oppose the claim of the petitioners for the other candidates to be seated. But the committee would not enter into the merits of this claim; and then determined, that those candidates *ought to have been returned*; without any thing more; thus confining their judgment to the return only. After the entry of this determination on the Journal, an order was made for leave to the electors to petition against their election.

A petition was accordingly presented, but was not proceeded in, from a failure in the matter of recognizance.

In 21 Journ. 671, Honiton, the report states, "and no counsel or witnesses appearing to support the said voters or the return of Mr. Serjt. S. the late sitting member (deceased), the Committee came to the following resolutions, &c." plainly giving reason to infer that they might have been heard. It can hardly be contended that a breach of the order, or any act after the election, can work an incapacity more fully than such an act as would occasion a void election, if done during the election; it, for instance bribery, incapacitates the candidate returned, yet in such case the other party never contended for a right to proceed *ex parte* after having proved bribery against the sitting member. In such cases the petitioner must prove a real majority on his side in opposition to the sitting member guilty of the bribery, in order to obtain the seat. But there is better reason in this case for the point contended for by the petitioner than in such as that of Colchester. For here the cause of incapacity happens during the election, and may be supposed to have had an unlawful influence upon it. But in the *Colchester case* it was an act unconnected with the election which made the objection to Potter.

The Committee omitted to call on the petitioner's counsel to know if

sel for the petitioner proposed to show that he had a majority over Mr. Potter by disqualifying ten of his votes, and there contended that the sitting member was not entitled to be heard. He was however heard, and insisted "that the Committee must from necessity either admit the sitting member to support the rights of those electors who sent him to Parliament, in opposition to the petitioner, or else give the electors an opportunity of exercising their franchise again, by the declaration of a void election without any further proceeding. There is no petition from these electors, nor could there be one, because their candidate had succeeded and possessed the seat." The Committee in that case resolved, "that the election of Mr. Potter having been declared void, the counsel be restrained from entering into any examination relative to the disqualification of voters on the poll for the said borough of Colchester." Here there is no petition from electors. No person is here to defend their rights, and therefore the petitioner cannot go into the scrutiny. In the *Canterbury case*, on the second election, the parties were disqualified at the time of election (*h*).

Mr. Harrison (who had previously been absent): In the present case the petition alleges that by fraud and bribes a colourable majority has been obtained over the petitioner, who had the majority of legal voters, and

they were prepared to go on with the merits of this case against *Potter*. This they ought to have done; but it was implied in the conduct of the petitioner's counsel throughout, that they could not or did not mean to proceed by proving a majority *as against Potter*. Therefore this was only an omission in point of form, which the Committee might well think immaterial and unnecessary from what they had seen of the cause, and of the petitioner's chief object. If the petitioner's counsel had put the cases on a different footing, I dare say they would have allowed Potter to oppose the petition as in any other cause."

(*h*) In the *Middlesex case*, 2 Peck. 370, leave was given to Mr. Mainwaring, or the electors, to present a petition within 14 days, as in the *Carnarvon case*, post p. 111.

who is entitled, having established the corrupt practices, to proceed to prove that majority. In the *Colchester case* (*i*) there was no such averment. There never was a case of bribery and treating alleged on a petition also claiming the seat, within his knowledge, in which the scrutiny was not gone into after the bribery and treating had been proved. In the *Galway* (*k*) *case* Mr. Martin was unseated, and the scrutiny was afterwards gone into. Here Mr. Stonor is entitled to protect the interests of the electors.

The Chairman observed, that in the Galway case Mr. Rolfe, the counsel for the sitting member, said he could not vary the case, and admitted the election to be void.

Mr. Harrison:

This was done to stop the petitioner, it being known that he could not produce the poll, but he obtained a week's time, and the sheriff, who had previously absented himself, then made the necessary affidavit. The Committee on inquiry would find the rule adopted in that case invariable. It was pursued in the *Great Grimsby case* (*l*), where the members were unseated.

Mr. Handley (a member of the Committee). In the *Colchester case* Mr. Potter was unseated for want of qualification, which can hardly be said to have had any influence on the voters.

Mr. Follett, in continuation:

The question is, what is the course of decided cases. In the *Great Grimsby case* the main allegation was, that the members had been guilty of bribery and treating. The reason why the scrutiny was gone into there was because there were some allegations in the petition which the sitting members wished to disprove. It must therefore be taken as a case of consent. The only other similar case was the *Dorsetshire* (*m*), in which Mr. Har-

(*i*) 1 Luders, 417.
(*k*) 82 Journals, p. 407.
(*l*) 86 Journals, p. 715.
(*m*) 86 Journals.

rison began with the scrutiny. Mr. Stonor did not undertake to defend all the allegations in the petition, but merely to defend his seat. That question having been decided, he had no longer in a legal point of view any interest, and Mr. Hughes having succeeded in proving the election void, he cannot now go into a scrutiny.

The room having been cleared, the Committee resolved, "That the petitioner do proceed with his case."

Francis Godfrey's case.

Mr. Harrison then proceeded to question the vote of Francis Godfrey, who had voted as a freeman, on the ground that he had not been admitted to his freedom previously to the 1st of March 1831.

The vote of a person not objected to before the revising barrister, cannot be questioned before a Committee for a disqualification which might have been a ground of objection before the barrister.

Mr. Follett:—This voter was not objected to before the barrister, and his vote therefore cannot be questioned before the Committee, unless they come to a contrary decision to that of the Petersfield Committee, in consequence of which Mr. Lefevre has resigned his seat. The provisions of the Reform Act, as to the right of voting, instead of referring, as former statutes on the same subject have always done, to the time of election, refer to the time of registration. The 27th section, conferring the new qualification, the 32d section, which preserves the rights of freemen, and the 33d section, reserving other ancient rights of voting, all contain the same condition, "if duly registered according to the provisions hereinafter contained." The 44th, 45th, 46th and 47th sections prescribe the mode in which lists are to be made out, and claims and objections are to be made. By the 50th section, the jurisdiction of the barrister is confined to those cases in which notices have been given. The 58th section, after providing that certain questions as to the identity and qualification of the voter, and his not having voted before at the election, may be put to a voter, and prescribing a form of oath, proceeds in these terms, "and no elector shall hereafter at any such election be required to take any oath or affirmation, except

as aforesaid, either in proof of his freehold or of his residence, age, or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding." Thus the whole machinery of elections is transferred from the election to the time of forming the register. It is the duty of the barrister to transmit the lists to the returning-officer in boroughs, who is to have them copied into a book; and the 54th section enacts that "every such book shall be deemed the register of electors to vote at any election which may take place after the last day of October in the present year, and before the 1st day of November in the year 1833." On the next registration any votes now on the register may be objected to, but in the meantime persons not objected to last year are entitled to vote. By the 59th section power is given to persons who have been omitted from the register, in consequence of the decision of the revising barrister, to tender their votes at the election; and the 60th section declares that the correctness of the register may be impeached before Committees of the House, by showing that, *in consequence of the decision of the barrister*, names have been improperly inserted or retained in it, or improperly omitted from it; "and the select committee appointed for the trial of such petition shall alter the poll taken at such election according to the truth of the case, and shall report their determination thereupon to the House, and the House shall thereupon carry such determination into effect, and the return shall be amended, or the election declared void, as the case may be, and the register corrected accordingly" (*n*). The way, therefore, in which the register is to be corrected is, by showing *the decision* of the barrister to be wrong. The case now in question has not been decided upon by him; the Committee cannot con-

(*n*) The remaining words of this section are, "or such other order shall be made as to the House shall seem proper."

sequently inquire into the validity of this vote, which must remain on the register until the next period of registration.

Two objects of the Act were, to lessen the expenses of elections, and for that purpose to have a register of voters, with a power to parties to impeach the right to vote of persons in the lists before the barrister. It was never intended to make that register an idle form, which it will be if the Committee shall decide that the register may be opened.

Mr. Harrison for the petitioner:

The effect of the construction contended for by the counsel for Mr. Stonor, would be to entail a very serious annual expense on members, particularly on those representing large constituencies. Every county member would have to keep a paid agent in every parish to guard against the frauds of overseers in preparing the lists. In the *Bedford case* (*e*), (then under discussion before another Committee,) the proportion of paupers on the register was about one-fifth of the whole number of voters.

Ancient authorities in support of the jurisdiction of the House.

The authorities, both ancient and modern, were in favour of the construction which he should contend for before the Committee. To begin with the older authorities. In the preface to Glanville's cases (*f*), it is stated that many of the ablest members of the two last Parliaments of King James agreed in opinion "that some certain rules or great outlines of the legal rights of voting were become necessary to be laid down, as a guide and direction to the electors and candidates in the country, and as a remembrance of the reasons and grounds upon which the determinations of the House were founded." A select committee was accordingly

(*e*) See post, p. 112. (*f*) Preface, pp. vi, vii, viii.

formed, "composed of a certain number of members, (60,) eminent for their great abilities, and particularly distinguished for their knowledge in the laws and constitution of their country." Of this committee Sir Edward Coke, Sir Heneage Finch, afterwards Lord Keeper, Sir Robert Heath, then Solicitor-general, afterwards Lord Chief Justice, Sir Thomas Hatton, afterwards Chief Justice, Mr. Pym, Sir Thomas Trevor, afterwards Chief Justice of the Common Pleas, Mr. Glanville, Mr. Noy, and Mr. Selden, the celebrated antiquarian, were members. The cases in Glanville are the result of the labours of that committee, and are, therefore, of high authority. The preface proceeds thus (*g*): "In the latter end of the sixteenth and the beginning of the seventeenth centuries, the question of the right to examine and determine matters relating to the election of members of Parliament was warmly agitated and contested between the Crown and the House of Commons. On the part of the Crown it was contended, that as the writ for election issued out of, and was returnable into, the Court of Chancery, the Lord Chancellor was the sole and proper judge of the due execution of the writ, and consequently of the legal qualifications of the elected. On the other hand, it was insisted upon by the House of Commons, that the sole and exclusive right of determining upon cases concerning the election of their own members was lodged in that House." Before this it had been resolved by the House (*h*), "that during *the time of sitting of this court*, there do not, at any time, any writ go out for the chusing or returning of any knight, citizen, burgess or baron, without the warrant of this House first directed for the same to the clerk of the Crown, *according to the ancient jurisdiction and authority of this House in that behalf accustomed and used.*" In 1586, the 28th and 29th of Queen Elizabeth, Mr.

(*g*) Preface, pp. ix, x. (*h*) 15th March 1580. Preface to Glanville, xlii.

Farmer and Mr. Gresham were elected knights for the county of Norfolk. Before the meeting of the Parliament, upon a suggestion made in Chancery that the first writ was either not executed, or irregularly executed, another writ for the election of two knights for that county issued, by virtue of which Mr. Gresham and Mr. Heydon were returned as duly elected. On the meeting of the House, "there appeared an intention in the House of taking the matter into consideration, and of inquiring into the merits of it." "The House of Commons received a very severe reprimand, in the Queen's name, for their presuming to interfere in it; notwithstanding which they persisted in their right (*i*)," and a committee was appointed to examine the circumstances of the said returns (*k*). The committee reported their opinion (*l*) "that the first writ and return were, in matter and form, perfect and duly executed." They declared that they understood that the Lord Chancellor, and divers of the Judges, having examined the matter, were of the same opinion. The report further states, that it had been proposed by one of the committee, that two members of it might be sent to the Lord Chancellor, to understand what his Lordship had done in the matter, "which the residue thought not convenient; first, for that they were sufficiently satisfied therein by divers of themselves, but principally in respect they thought it very prejudicial and injurious to the privileges and liberties of this House to have the cause decided, in any sort, by any others than only by such as are members of this House; and that albeit they thought very reverently (as becometh them) of the said Lord Chancellor and Judges, and know them to be competent judges in their

(*i*) Preface to Glanville's cases, p. xliv.

(*k*) Sir Simonds D'Ewes's Journal, pp. 396, 397.

(*l*) Preface to Glanville, l. *et seq.*

places; yet in this case they took them not for judges in Parliament in this House. And so further required that, (if it were so thought good), Mr. Farmer and Mr. Gresham might take their oaths, and be allowed of and received into this House, by force of the said writs, as so allowed and admitted only by the censure of this House, and not as allowed of by the said Lord Chancellor and Judges, which was agreed unto accordingly by the whole House, and so ordered also to be set down and entered by the clerk."

In "The Form of Apology or satisfaction concerning their privileges, addressed to the King's Most Excellent Majesty, from the House of Commons assembled in Parliament" (*m*), appears the following passage, with reference to the interference of the Crown in the case of the election of Sir Francis Goodwin: "neither thought we that the judges' opinion, (which yet, in due place, we greatly reverence), being delivered with the common law, (which extends only to inferior and standing courts), ought to bring any prejudice to this high Court of Parliament, *whose power being above the law, is not founded on the common laws, but have their rights and privileges peculiar unto themselves.*"

In the year 1624, the House of Commons declare it to be "the ancient and natural undoubted privilege and power of the Commons in Parliament, to examine the validity of elections and returns concerning their House and assembly, and to cause all undue returns in that behalf to be reformed, and to punish the offenders concerning the same according to justice."

On the 2d of February 1770, a resolution (*n*) was moved in the House of Lords, "that the House of Commons, in the exercise of its judicature in matters

(*m*) Sir M. Hale, on the original power and jurisdiction of Parliaments, p. 206, *et seq.*

(*n*) Preface to Glanville, p. lxxxv.

of election, is bound to judge according to the law of the land, and the known and established laws and customs of Parliament, which is part thereof." This motion was rejected, and it was resolved, "that any resolution of this House, directly or indirectly impeaching a judgment of the House of Commons, in a matter where their jurisdiction is competent, final and conclusive, would be a violation of the constitutional rights of the Commons, tends to make a breach between the two Houses of Parliament, and leads to general confusion," thus ending by deciding in favour of the privileges of the House of Commons.

The doctrines laid down by Glanville have been acted on without dispute ever since his time, and many subsequent statutes (*o*) have been passed in confirmation of the jurisdiction, and of the ancient law and custom of Parliament. But if the argument on the other side is to be assented to, we must conclude that the authority of the Commons House of Parliament, which they would not in Elizabeth's time entrust to the Chancellor and the Judges, is to be placed by this Act in the hands of junior barristers, of parish overseers, and country attornies.

The determinations of Courts of Law as to the effect of subsequent affirmative statutes upon prior enactments are very material, for if it shall be shown that Acts of Parliament are not to be repealed by implication, how much less the high authority of Parliament itself, and those privileges which have been considered by Glanville and other writers to be necessary to preserve its constitution and purity. We find it laid down in *Gregory's case* (*p*), "that a later statute in the affirmative shall not take away a former Act." This

(*o*) See 10 Geo. 3, c. 16; 11 Geo. 3, c. 42; 25 Geo. 3, c. 84; 28 Geo. 3, c. 52; 34 Geo. 3, c. 83; 53 Geo. 3, c. 71; 9 Geo. 4, c. 22.

(*p*) 6 Rep. 19 b.

doctrine is confirmed in *Foster's case* (*q*), where it is said (*r*) "Forasmuch as Acts of Parliament are established with such gravity, wisdom and universal consent of the whole realm, for the advancement of the commonwealth, they ought not, by any constrained construction out of the general and ambiguous words of a subsequent Act, to be abrogated:" and it is there observed (*s*), "that in many cases the designation of a new person in a later Act of Parliament shall not exclude another person who was authorized to do the same thing by a precedent Act." In the same spirit it has been decided in modern times, that the 1 Will. 4, c. 21, enabling courts of law to issue commissions for the examination of witnesses abroad, will not prevent the Lord Chancellor from issuing such commissions just as he did before the passing of the Act (*t*); and in *Sheriff* v. *Coates* (*u*), which was an application for an injunction under the Calico-printers' Acts (*x*), which give a special action for the piracy of patterns, it was held that the jurisdiction of equity was not excluded by the special remedy provided by those Acts, and that this right of property, though only of three months duration, was capable of protection by injunction. It is said by Blackstone (*y*), that "where the common law and a statute differ, the common law gives place to the statute; and an old statute gives place to a new one. If both Acts be merely affirmative, and the substance such that both may well stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy. If by a former law an offence be

(*q*) 11 Rep. 57.

(*r*) Ibid. 63.

(*s*) Ibid. 64.

(*t*) So stated by counsel in *Ex parte Lowe*, 1 Deacon & Chitty, 84.

(*u*) 1 *Russell* v. *Mylne*, 159; and see *Coates* v. *Clarence Railway Co.* Ibid. 181.

(*x*) 27 Geo. 3, c. 38, s. 1; 29 Geo. 3, c. 19; and 34 Geo. 3, c. 23.

(*y*) 1 Comm. 89.

indictable at the quarter sessions, and the latter law makes the same offence indictable at the assizes, here the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction, and the offender may be prosecuted at either, unless the new statute subjoins express negative words, as, that the offence shall be indictable at the assizes, *and not elsewhere* (*z*)." Now unless it be shown that the words of the 60th section absolutely repeal the jurisdiction of Parliament, a construction of the Act destructive of that jurisdiction cannot be justified. It cannot be said that the words expressly repeal the former jurisdiction of the House, and transfer it to the barrister. The 75th section has provided that all Acts relating to the election of members of Parliament shall remain in force, except so far as they are repealed by the Act, or are inconsistent with the provisions thereof. The jurisdiction of the House and the Act are consistent together, and if the House maintains it, the Reform Act and the decisions of the Committees upon it, by which the future conduct of the barristers will be guided, will place the representation of the country in the power of a new and improved constituency.

In *Twyne's case* (*a*), "because fraud and deceit abound

(*z*) 11 Rep. 63; see Vin. Abr. 525, tit. Statute, pl. 132 note; and *Goldson* v. *Buck*, 15 East, 372. See also *Rex* v. *Moreley*, 2 Burr. 1041, where it was held that *certiorari* lies to remove orders on the conventicle act, even after appeal, trial, verdict and judgment. The sixth section of that Act provides, "that no other court whatsoever shall intermeddle with any cause or causes of appeal upon this Act, but they shall be *finally* determined in the quarter sessions *only*. Per curiam. The jurisdiction of this court is not taken away, unless there be express words to take it away; and *Shipman* v. *Henley*, 4 T. R. 109.

(*a*) 3 Rep. 82. See also *Cadogan* v. *Kennett*, Cowper, 434, per Lord Mansfield: "The principles and rules of the common law, as now universally known and understood, are so strong against fraud in every shape, that the common law would have attained every end proposed by the statutes 13 Eliz. c. 5, and 27 Eliz. c. 4. Those statutes cannot receive too liberal a construction, or be too much extended in suppression of fraud."

in these days more than in former times, it was resolved by the whole court, that statutes made against fraud should be liberally and beneficially expounded to suppress the fraud;" and therefore the statute of 13 Eliz. c. 5, which avoids all gifts of goods, &c. made to defraud creditors and others, was held to extend by the general words to a gift made to defraud the Queen of a forfeiture. Here we complain of fraud: persons have procured themselves to be improperly placed on the lists. In many instances, which have occurred elsewhere, objections have been made to the names of persons having no title to vote whatever with the view of protecting their votes, the objections being withdrawn before the barrister. Are these no frauds on the House of Commons? Are we to be told, because no objection has been made, that a name which has by fraud been placed on the list is to remain there? Blackstone has said (*b*), "there are three points to be considered in the construction of all remedial statutes: the old law: the mischief: and the remedy provided by Parliament to cure the mischief." The mischief which the Reform Act was passed to correct was the defective representation of the people. Instead of amending this, it will render it more defective, unless the House retains its jurisdiction. It is no answer to say there are penalties which may be recovered for misconduct, for, independently of the consideration that such penalties are always difficult to be recovered, no sufficient protection is afforded by them against the election of persons not chosen by the constituency created by the Act.

It has been determined by a very early authority, that the interest of the commonwealth, and not that of the individual, is to be considered.

In the *Chippenham case*, which is reported in Glanville, we find it stated that, "albeit, that in other inferior

(*b*) 1 Comm. 87.

courts of the common law, the court and the party in that suit are concluded by the false return of the sheriff, in a cause between man and man; and the party grieved thereby left to his action upon the case, for his remedy against the sheriff, to recover his damage for the wrong thereby done unto him. Yet in Parliament, because the commonwealth hath an interest in the service of every particular member of the Commons House of Parliament, and this court, and council of state and justice, is guided by peculiar, more high and politic rules of law and state than the ordinary courts of justice are in matters between party and party; and if, in a case of a false return to the Parliament, the House of Commons should be thereby concluded, then should it be in the power of the sheriff to fill the Parliament with persons never duly chosen, who, by presumption, will not be indifferent; and so may be a great means to overthrow, or much prejudice, the commonwealth; for which no fine or punishment to be imposed upon the sheriff or other parties for such undue returns could ever make sufficient satisfaction."

In the case of *Felton* v. *Easthope*, which was an action against a member of parliament under the bribery act, the agent who had bribed, stated, that he had done so without the knowledge of the defendant, who consequently obtained a verdict, although, as Lord Tenterden said in his judgment, such acts of the agent, with or without the knowledge, or direction of the principal, would have rendered the election void. Indeed, if the doctrine were admitted, that because the member told his agent not to bribe, he should not be answerable for the consequences, the candidate might give 5,000 *l.* to his agent, and the agent might expend 4,800 *l.* in bribery, and yet the return could not be questioned.

With respect to the vote before the Committee no argument has been adduced, but several sections of the Act have been read. We admit that the register is conclusive at the poll with reference to the election, but it is

no further conclusive. The 32d section enacts, that every person who would have been entitled to vote as a freeman if the Act had not been passed shall be entitled to vote, &c. if registered, but there is a proviso that no person shall be entitled to vote if admitted a freeman since the 1st of March 1831, otherwise than in respect of birth or servitude. Our complaint is that this voter was not entitled to admission. We are told we cannot inquire into his right of voting now: we contend, however, that we have a right to say he is not entitled to vote, and, if we prove him so, to strike him off the poll. This is analogous to other parliamentary principles. It was said in Glanville's time that, if you allow the time to pass by during which a corporator might be objected to, you could not object to his vote; and looking at Peckwell and other books (*c*) one might be led to suppose that such was the law. But in the *Banbury case* (3d Feb. 1808) Mr. Horner required that point to be raised, and an alderman elected five years and nine months was declared not entitled to vote (*d*). As to the expense of a Committee, that, heavy as it is, occurs only occasionally: but under the construction contended for, the expense will be permanent, annual, and constant. The arrangements of the registration are admirable as a substitute for the contests of votes at the poll. If, however, its effect is extended beyond that, a person who is in a condition to show he has a majority of votes of the real constituency, will be prevented from obtaining his seat. All we ask is the same power as existed before of calling votes in question before the House.

Mr. Follett in reply:

Whether it may be necessary for the House of Commons to pass a declaratory law to settle the point raised,

(*c*) See *Elgin case*, 3 Lud. 351. *Peterborough case*; and 2 Douglas 81, *Bedford case*.
(*d*) See 3 Douglas, 145, note (H).

is a question for the House and not for this Committee. The proposition which had been laid down on the other side was, that the Committee possessed the same exclusive power and jurisdiction as the House had when Glanville wrote, and that the Reform Act contained no express words to take it away. The provision in the Reform Act was the same with regard to claimants as to objected votes, the words "in consequence of the decision of the barrister" occurring both in the 59th and 60th sections. If therefore the jurisdiction of the House subsisted as to one, it must also subsist as to the other, so that a person not inserted by the overseers in the list, not claiming before the barrister, might, according to that construction, tender his vote at the poll, and be placed upon it by a Committee on a petition. It was contended that the registry had no effect as regarded the House of Commons. One ground on which this position rested, was the course of decision on the construction of statutes. "If a new jurisdiction be created, the old is not gone unless expressly taken away." This principle being admitted, any observations on the cases cited would be unnecessary. The clauses of the Reform Act presented considerable difficulty in the way of construction, but the question was, whether, applying acknowledged principles, the Committee could arrive at the decision that their jurisdiction was confined to votes decided upon by the barrister.

It had been said that a person might fraudulently object, and thereby deprive another of the opportunity of objecting, and then withdraw his objection before the barrister. Was that so? Notices of objection were to be sent to the overseers (*e*), and were not to be published until a day when it would be too late for other persons to object. Therefore that alleged fraud could not prevail. Has then the petitioner the power to

(*e*) See 2 Will. 4, c. 45, s. 47.

impeach the correctness of the register under the Act? That power is not given him by the 60th section; and if the argument on the other side were correct, what earthly use was there in the enactment of the 60th section? The argument was, that by the formation of the barrister's court the power of the House of Commons was not taken away. Here the Act has pointed out certain cases in which the jurisdiction is to be exercised, and having originated in the House of Commons it was competent for that House to surrender a portion of its authority. No instance could be cited of an Act creating a court by which the old jurisdiction was not held to have been taken away, but many cases might be brought forward to prove the contrary.

Before the passing of the Bankruptcy Court Act (*f*), the Lord Chancellor had exclusive jurisdiction in matters of bankruptcy. That statute first recites the 6 Geo. 4, c. 16, and states in its preamble, "that it is expedient to provide means of administering and distributing the estates and effects of bankrupts, and of determining the questions which from time to time arise touching the same, other than are provided by the said Act," and then enacts "that it shall be lawful for His Majesty to create a court." The statute then creates the Court of Review; and in the second section it is declared, "that the judges shall have superintendence and control in all matters of bankruptcy, and shall also have power, jurisdiction and authority to hear and determine, order and allow, all such matters in bankruptcy as now usually are or may be brought by petition or otherwise before the Lord Chancellor, whether such matters may have arisen in the said Court of Bankruptcy or elsewhere, except as herein is provided." The third section pro-

(*f*) 1 & 2 Will. 4, c. 56.

vides "that all such matters to be heard and determined in the said Court of Review shall be brought on by way of petition, motion or special case, subject to an appeal to the Lord Chancellor on matters of law or equity, or on the refusal or admission of evidence only." This statute containing no section in express terms taking away the power of the Lord Chancellor, a question had twice been raised before his Lordship whether the jurisdiction of the Chancellor had been taken away by it. In *ex parte Lowe* (*g*), Lord Brougham said, "I have no doubt whatever upon the question. The authority of the new judges is exclusive. I have no control or authority whatever over them, except what the Act of Parliament gives me, namely, to hear appeals from their decisions in the precise manner pointed out by the Act. The new judges have the authority out and out, and I have good reason to believe it was intended by the Legislature that they should have that authority." In *ex parte Benson* (*h*), the Lord Chancellor says (*i*), "with respect to the jurisdiction of the court prospectively, in all matters arising in bankruptcy henceforth under the fiat, I consider the jurisdiction of this court is so transferred to the Court of Review; and that the Court of Review could only be controlled and superintended by this court by an appeal in matters of law or equity in the way pointed out, either by special case, or in any other mode which in the peculiar circumstances of the case may seem proper." The Vice Chancellor, who had been called in to assist his Lordship with his judgment, after referring to the sections mentioned above, proceeded as follows (*k*): "It does appear to me, that it is sufficiently to be collected from the enactment in the first section, coupled with what

(*g*) 1 Deacon and Chitty, 31.
(*h*) Ibid. 324.
(*i*) 1 Deacon and Chitty, 330.
(*k*) Ibid. 329.

I find in the second and third, that *primâ facie* the jurisdiction of the Lord Chancellor in matters of bankruptcy is taken away; and I should say, taken away, except so far as you can collect on the face of the Act itself that it must of necessity be preserved. It was said, that where there has been an existing jurisdiction, which therefore might be called a concurrent jurisdiction, with a view to one that is newly created, that cannot be taken away except by express words; and in support of that observation, a case was cited from Saville's reports, which, on the face of it, I think appears to be a very singular case. It is the case of *Agard* v. *Candish*, Saville, 134. But whatever may be the authority of that case, it seems that a more liberal view of the law has been taken in a more modern case, namely, that of *Cates* v. *Knight* and *Cates* v. *Mellish*" (*l*).

His Honor then stated that case, and proceeded in his judgment:

"Now, in the present case the Legislature has declared that the intent of all those enactments of the Act is, that the rights, as well of the bankrupts themselves, as of their creditors, are to be enforced with as little delay and uncertainty as possible; evidently implying, that the jurisdiction which existed down to the time of passing the Act was a jurisdiction which was attended with more expense, with more delay, and with more uncertainty than it was then convenient should be allowed to exist. Therefore, to the intent that the law in that department may be exercised with as little expense, delay, and uncertainty as possible, a new jurisdiction is created, and it does appear to me that there would be an inconsistency in saying, that generally the jurisdiction of the Lord Chancellor was intended to remain after this intention had been so clearly pointed out that there should be a new jurisdiction, with the reason assigned."

(*l*) 1 T. R. 442.

In the case of *Cates* v. *Knight*, there were actions brought to recover penalties under the 25 Geo. 3, c. 51; some of the counts of the declaration were for the penalty of 50 *l.*, which could only be sued for in the superior courts; and the others were for the 10 *l.* penalties, which apparently could only be sued for in the inferior courts. On the trial the plaintiff obtained a verdict on the counts for the lesser penalties only; and Mr. Serjt. Bond moved to arrest the judgment, on the ground that no penalty under 50 *l.*, created by the statute, could be sued for in the superior courts. The 57th section enacted, that all penalties of 50 *l.* should be sued for in any of His Majesty's Courts of Westminster; and the 59th section provided, that any justice of the peace, residing near the place where the offence should be committed, might hear and determine any offence against that Act which subjected the offender to any pecuniary penalty not amounting to 50 *l.* and to convict, &c. Lord Kenyon, in giving judgment, said, 'It is clear that the Legislature inserted this clause for the benefit of the prosecuted; and they enacted, that when a party should incur one of the smaller penalties of the Act he should be sued before a magistrate, in order to prevent his being saddled with the unmerciful costs of a merciless prosecutor; therefore I think that we are acting up to the full intent of the Legislature in saying that these penalties can only be recovered before a magistrate.' And Mr. Justice Ashurst said, 'Generally speaking, this Court cannot be ousted of its jurisdiction but by express words, or by necessary implication, any more than an heir-at-law of his inheritance; the necessary implication in both instances is engrafted on the general rule. Nothing can be clearer than the intention of the Legislature in this instance."

If then an intention apparent on an Act is sufficient to take away a jurisdiction existing before the passing of it, the question will be, whether that inten-

tion is sufficiently apparent on the face of the present Act.

Now suppose the objection to the voter, whose right is now to be brought under consideration, to be that he is a freeman not resident within seven miles. The language of the Act is important. By the 32d section it is enacted, "that every person who would have been entitled to vote in the election of a member or members to serve in any future parliament for any city or borough, as a burgess or freeman, if this Act had not been passed, shall be entitled to vote in such election." Then comes the proviso, that he must be registered, and he cannot be registered, if he resides beyond seven miles from the polling place. The 54th Section declares that the "book" to be completed in manner therein directed, "shall be deemed the register of the electors to vote in the choice of a member or members to serve in Parliament," "at any election] which may take place after the said last day of October in the present year, and before the 1st day of November 1833." No person is entitled to vote who is not on the register. The power of petitioning the House is given by the 60th section. Here the petitioner has sought to avail himself of this section. It has been said that the introduction of this vote on the register is a fraud—a fraud on whom? It is no fraud on the candidate, who goes down and offers himself on the faith of the registry. It is no fraud on the constituency, for the constituency had the power of objecting. Every candidate since this Bill passed goes down on the faith of the register. He may petition: if he does so, the power he has is pointed out by the 60th section.

The 75th clause of the Act has been alluded to. It enacts "that all laws, statutes and *usages* now in force respecting the election of members to serve in Parliament for England and Wales shall remain in full force," "except so far as any of the said laws, statutes or usages are

repealed or altered by this Act, or are inconsistent with the provisions thereof." Now it is a curious fact, that there is no statute directly repealed by this Act. This clause supposes that statutes may be repealed by implication; so also some of the usages in force. Here the question is, whether *usages* (*m*) have not been repealed. The Committee have the power to go into a scrutiny without altogether repealing the 60th section. They may impeach the correctness of the register by showing the decisions of the barrister to have been wrong. The petitioner's counsel may do that without going into the register generally. He must say that this clause is useless, because Committees had this power before. The just inference, however, from the words "and the register corrected accordingly," in the 60th section, is, that the power of Committees is confined to the correction of the decisions of the barrister. No lawyer could arrive at the construction contended for on the other side without altogether getting rid of the 60th section. It was said that the decision sought by the sitting member would increase expense, which it was the main object of the Act to diminish. The first expense under the Act was that of registration; the next that of election. Here both had been incurred. It would be well, therefore, to consider whether it did not embrace the expense of petitions as well as of elections: if so, then the expense of every proceeding under the Act will be lessened, should this construction be put upon it. A contrary interpretation will much increase the expense, for the whole poll will be opened before committees, and all the costly machinery of registration will be of no service. It can hardly be supposed that this was intro-

(m) This word seems to have been introduced into the Act to protect the customs of particular boroughs with respect to the exercise of the elective franchise. The word will be found to be used in that sense in the cases of *Liskeard*, 1 Peck. 140; *Tewkesbury*, ibid. 180; *Ludgershall*, ibid. 380; *Malmesbury*, 2 Peck. 405, and many other cases.

duced without an object. The Committee would look at the Act, and see if they could collect the object of it, and having done so, would carry that object into effect.

Mr. Harrison said, the foundation of the decision of the Court of King's Bench, in *Cates* v. *Knight* (*n*), was, that the justices had the power of mitigating the sentence, and therefore the Act of Parliament would have been defeated if the decision had not been left to them.

The Chairman inquired of Mr. Follett whether, if it were proposed to the Committee to set aside a voter for bribery, his argument would not go to this extent, that the Committee must not scrutinize that vote.

Mr. Follett answered, that bribery was a personal disqualification. In the case of the vote then under discussion, the objection was in force at the time of the registration. The point before the Committee was, whether they could go into the register on a vote not objected to before the barrister.

The Committee resolved, "That they would not allow any objection to the qualification of any voter at the time of registration whose name was not objected to before the revising barrister" (*o*).

(*n*) *ubi supra.*

(*o*) Questions in some respects resembling the above, were for a long time agitated before committees, with respect to their jurisdiction over the votes of the freeholders of Scottish counties. All points respecting controverted elections were in ancient times determined by the Scotch Parliament, who were in the habit of referring them to a committee appointed for that purpose, which continued during the whole parliament. *Wight's Inquiry*, book. 1, c. 2, p. 65. By the Scotch Act, 8 Ch. 2, c. 21, which passed in 1681, the freeholders of every county were directed to make up a roll of the freeholders having a right to vote, which they were to meet and revise every Michaelmas. At this meeting any person was to have the power of objecting to the insertion of any name on the roll, and an appeal was given from the decision of the freeholders on these objections to parliament, if sitting, and if not, in a particular manner to the Court of Session. No alteration was made in the mode of election of Scottish members of the House of Commons at the Union; but by the 3d section of 16 Geo. 2, c. 11, a power was given to any person refused to be admitted upon, or struck off the

Mr. Harrison here said the petitioner would not proceed with his case.

roll at the Michaelmas court, and to any freeholder who apprehended that a person was wrongfully put on the roll, to apply by complaint to the Court of Session within four calendar months after such inrollment, who were directed to hear and determine in a summary way upon such complaint, and upon the production of an extract of their judgment, the sheriff or steward's clerk was authorized to make any alteration directed by it. There were no words in this statute excluding the jurisdiction of Parliament. The first question which appears in the reported election cases to have arisen upon this statute, was in the *Clackmannan case*, (2 Douglas, 345.) The dispute there was as to the qualification of the sitting member, who (it was agreed) ought to have been a freeholder, entitled to vote; he was on the roll, had been objected to at the last freeholders court, the objection had been overruled, and four months had elapsed without any complaint having been made to the Court of Session. Upon these facts, the Committee determined that they were bound by the statute of Geo. 2, that the inrollment of the sitting member, under all the circumstances of the case, was a sufficient answer to the petitioners demand of his qualification; and that no other evidence should be called as to his qualification. In the *Fife case*, (4 Douglas, 179,) two freeholders had been inrolled, although objected to, and complaints had been in both cases preferred to the Court of Session, and dismissed; but in one of them a revised petition, similar to a petition for rehearing in the English courts of equity, had been presented, which was pending at the time the Committee sat. The votes of both of these freeholders were determined to be good. In the cases of *Orkney* and *Kircudbright*, which are mentioned by Mr. Wight, book 3, c. 2, p. 214, the question that was presented to the committee was, whether the 16 Geo. 2, c. 11, which directed that the freeholders saisines should be registered one year before their inrollment on the freeholders roll, had virtually repealed the 12 Anne, c. 6, which required their registration a year before the teste of the writs for calling a new parliament, or before the date of the warrant for making out a new writ for an election during the continuance of a parliament, to entitle the freeholder to vote or be elected at that election. The Court of Session had decided in many instances that a year's registration of his saisine entitled the freeholder to be inrolled: the Committees in both these cases held that a registration of his saisine for the same time previously to inrollment, entitled him to vote; but it does not appear that any proceedings with regard to the particular cases before the Committee had been taken before the Court of Session. Probably, considering the nature of the point in dispute, had they come to an express resolution that such proceedings might be dispensed with, it would not have been at variance with the decisions in the *Clackmannan* and *Fife* cases. The Ayr-

Mr. Serjt. Merewether declared that the sitting member withdrew his case of treating against the petitioner.

The Committee came to the following resolutions: 8th March.

That Thomas Stonor, Esq. was not duly elected a citizen to serve in this present Parliament for the city of Oxford.

That the last election for a citizen to serve in this present Parliament for the said city of Oxford, so far as related to the said Thomas Stonor, Esq. was a void election,

And they also resolved, that neither the petition of William Hughes Hughes, Esq. nor the opposition to the said petition, appeared to them to be frivolous or vexatious.

shire committee in 1781, (3 Luders, 316,) resolved, "That it was not competent for them to enter into a discussion of the qualification of such freeholders as had either been four months on the roll, or whose qualification had been sustained by the Court of Session, and no appeal entered against their judgment;" and upon a subsequent day they came to a further resolution, "that those cases in which it was still competent to appeal against the decrees, during that session of Parliament, were within the spirit of their former resolution, and that it extended not only to the judgments of the Court of Session adding claimants to the roll, but likewise to those expunging persons from the roll." In the *Elgin case*, (3 Luders, 329,) the Committee refused to admit evidence to prove the disqualification of freeholders who had been so ten years without dispute. A similar determination was come to by the Sutherland committee, (2 Fraser, 174;) and by the Roxburgh committee, (ibid, 381;) but this latter committee, as well as the Kircudbright, (1 Peck, 439,) placed voters on the poll who at the freeholders meeting for the election had refused to take the trust oath as to their qualification enjoined by the 7 Geo. 2, c. 16, and had consequently been struck off the roll. With this latter exception, all the committees appear from their decisions to have considered the inrollment on the freeholders roll to have been conclusive, although the arguments that the jurisdiction of an inferior court could not be taken away by an Act of Parliament creating a new jurisdiction without express words, and that an appeal lying from the decisions of the Court of Session to the House of Lords, the power of deciding upon votes was thus transferred to the other House of Parliament, were pressed upon them, especially on the earlier occasions. As far, therefore, as analogy goes, the decisions of the *Petersfield*, *Oxford* and *Bedfordshire* committees, as to the conclusiveness of the register under the Reform Act, appear to be supported by those of former Committees.

A new writ was ordered "in the room of Thomas Stonor, Esq., whose election had been determined to be void."

Proof of the Poll.

James Banting, Esq., the Mayor of the city of Oxford, was called to produce the poll. He stated that the poll-books had been brought to his house from the town-clerk's office at the town-hall, and were delivered to him packed, for the purpose of being produced to the Committee, by a confidential clerk named Jacobs, who got them from a desk in the office, of which Jacobs had the key, and in which they were deposited after the election with his knowledge (*p*). He stated further, that the poll-books were brought to him at the close of each day's poll by the deputy returning-officers, and were either sealed by them before they were so brought, or in the apartment where he was; that he never counted the books; that the town-clerk's office was a very public one, the town-clerk transacting there his business of an attorney; that on the evening of the first day of the election the poll-books were locked up in the desk; that he saw them so locked up; that either the city marshal or Jacobs carried them there; they were not out of his sight until locked up; that Jacobs delivered them out on the following morning by his direction (*q*); that he could not recollect whether he was in the town-clerk's office when the poll-books were delivered out; that on the close of the second day the books were delivered to him and carried to his dwelling, and then delivered by him to Jacobs, with directions to keep them in safe custody; that he told Jacobs to take them into the office and lock them up; that when the result of the poll was declared on the Thursday, the poll-books were brought to the hustings

(*p*) In the *Dublin case* (1806) where the poll was delivered by the returning-officer, at the town clerk's office, to his clerk, who placed it in a desk of which he kept the key himself, the poll was admitted. Corb. & Dan. 91 n.

(*q*) This was a mistake. See the evidence of Jacobs.

in the town-hall by Jacobs, as he believed, his sworn poll-clerk and attendant; that Jacobs broke the seals in his presence, and cast up the numbers, which were checked by gentlemen on the part of Mr. Hughes and Mr. Stonor; that the numbers concurred after being so checked; that he saw the total result of the poll, but did not himself examine it; that he could not tell whether as to numbers the books were in the same state as when cast up; that the poll-books were then given to Jacobs, with directions to put them into a place of safety; that he gave Jacobs permission to copy the poll and get it printed for his own benefit, but with a strict injunction not to let the books go out of his hands; that he next saw the books when produced to a gentleman acting on the part of Mr. Hughes, about a week or ten days before his examination, in the town-clerk's office; that he believed he was there the whole time they were under inspection; that he supposed they were again put into the desk; that Jacobs acted for the town-clerk, but was not recognised as deputy town-clerk, nor did he hold any official situation in the corporation.

In answer to a question by Mr. Law, Mr. Banting said he did not know whether Jacobs took a part in the election for Mr. Stonor, nor whether he attended for him before the revising barristers.

The poll-books were here proposed to be tendered.

Mr. Follett:—The first step in evidence before Committees is to produce the poll-books, properly authenticated (r). The question is, whether here the poll-books have been produced properly authenticated. One question put by Mr. Law was, whether Jacobs was friendly to the sitting member; that is perfectly immaterial: the question is, whether the books have been properly taken care of during and since the election. He understood the witness to say that the books were

(r) Newcastle-under-Lyne, 1 Peck. 490; Waterford, 1 Peck. 236.

produced to him sealed at the end of the first day; these books he hands to another person to keep safely: that is a parting with the possession and custody of the books. The key of the desk was not kept by the returning-officer; the office where they were placed was a public office and an attorney's office; they were totally out of the control of the returning-officer. He submitted that, according to the cases, the poll-books could not be received in evidence, it having been the clear rule of all previous Committees, that they would not receive poll-books unless authenticated.

In the *Dungarvon case* (*s*), the clerk of the peace for the county of Waterford produced from his office papers which he stated himself to have received from the counsel for the returning officer at the election, who delivered it to him as the original poll. These papers were indorsed by the clerk of the peace with his name, and the time of his receiving them, and they had remained in his office ever since in the same state, and sealed; nor was the seal broken until the meeting of the Committee. The handwriting of the papers was proved to be that of Mr. Bailie, the returning-officer. It was also proved, that notice had been given to him to produce the poll-books. There were several poll-books at the election. A witness was called who produced one of them, which was taken in the deputy's court; that first mentioned was taken in the court of the returning-officer. Under these circumstances, it was proposed to put in the above papers and poll jointly as the poll-books. The Committee, however, resolved, "That sufficient evidence had not been given to the Committee to satisfy them that the poll-books tendered are the poll-books of the Dungarvon election, which took place in May 1807."

In the *Chester case* (*t*) the town-clerk and under-

(*s*) 1 Roe, 712, n. (*t*) 1 Corb. & Dan. 72.

sheriff of Chester produced the poll-book, which he stated he believed he had received from the sworn poll-clerk of the sheriffs, who were the returning-officers, on the evening of or morning after the close of the election, at his office; that it had remained unaltered in his custody ever since, and that he was the proper officer to have the custody of it; that he had not seen the book at the close of the poll; that he knew the poll-clerk, and was frequently in court during the election, where he saw him act as poll-clerk. The Committee resolved, that the poll-book was not sufficiently proved. Subsequently the poll-clerk proved the book.

In the *Limerick case* (*u*), the town-clerk and clerk of the peace for the county and city of Limerick stated, that the sheriffs were the returning-officers, and that from one of them he received the poll a few days after the termination of the election; that the poll-book was sealed up in a parcel when he received it; and that it had continued so, in his possesion, ever since. The Committee resolved, "that there had not been sufficient evidence adduced to satisfy them that the sealed up papers purporting to be the poll-book of Limerick were such."

This rule was recognised also in the cases of *Bristol* (*x*) and *Drogheda* (*y*).

In the *Dorset case* (*z*), (not reported), the clerk of the peace produced the poll-book; it was objected that he had parted with the book: it turned out that he had not. He went down to Dorchester to enable parties to examine the book.

Mr. Harrison:—The clerk of the peace delivered the book to his clerk who transacted the business of his office, who took the book to Dorchester.

Mr. Follett (in conclusion) was content to put the

(*u*) 1 C. & D. 89.
(*x*) Ibid, 86.
(*y*) 1 C. & D. 95.
(*z*) Minutes, 1st March 1832.

question on this issue: if the books had been in the custody of the mayor, so that he was enabled to swear to them, then they could be received.

Mr. Harrison argued on the inconvenience which would result from allowing the objection. It would be impossible to prove poll-books without calling the poll-clerks. In counties the expense would be serious. He contended that Jacobs was as much the deputy of the returning-officer as the clerk in the *Dorset case*; and then referred to the course adopted in the *Wexford case* (*a*), and other cases last Session. In the *Dorset case* the poll was produced by the clerk of the peace, who was utterly ignorant of the book, and could give no account of it, except that the sheriff delivered it to him, and he had not altered it. There was also an objection raised in that case, that the poll-book was not kept in the record-room. He had refused to call the under-sheriff, standing on the ground that the production by the clerk of the peace was sufficient. The *Pembroke case* (*b*) was to the same effect.

Mr. Follett was heard in reply, in the course of which he mentioned the 10 Anne, c. 23 (*c*), upon which the objection in the *Dorset case* had turned, and he stated that the clerk in that case had transacted the business of the clerk of the peace's office for 30 years, and no other business whatever. He was acting clerk of the peace. The committee there were satisfied that the books were never out of that person's custody. In this case the Committee must decide that the books had been in the custody or power of the returning-officer since the election, or they could not be received.

(*a*) Minutes, 5th March 1830.

(*b*) Minutes, 16th Sept. 1831.

(*c*) The 5th section of that statute directs the sheriff or returning-officer, within the space of 20 days after the election, faithfully to deliver over upon oath (to be administered by two justices) to the clerk of the peace of the county, all the poll-books of the election, without embezzlement or alteration, to be kept among the records of the sessions. The Irish statute, 35 Geo. 3, c. 29, s. 16, contains the same provision.

The Chairman communicated the following resolution:

"Resolved, That the Committee are of opinion that further evidence is necessary to prove the proper custody of the poll-books."

The Committee adjourned until the following day at 12 o'clock, for the purpose of enabling the petitioner to obtain the evidence of

Henry Jacobs, who stated, that he cast up the poll; that the numbers were as they stood then; that the books, after the poll was declared, were delivered to him; that he took them into the town-clerk's office and put them into the middle-room on the table until the Saturday following, when he removed them to his own house; that they were there placed in a parlour and left there by him when he went to his office, the hours of attendance at which were from ten until two, and from four until a much later hour; that the books were copied there with a view to the publication of a poll-book; that the witness was assisted in copying the books by a clerk named Berryman, whom he might have left in the room copying once or twice; that the books remained in the parlour about three weeks; that they were not locked up even at night; that at the end of the three weeks he took them back to the town-clerk's office, and put them into the middle-room for a day or two, not locked up; that he believed the books were not locked up at all until he heard that a petition was likely to be presented; that as there were four or five clerks, and only one key of the outer-door of the office, the practice was to place the key on the top of that outer-door, so that all might have access to it; that he saw there were some erasures in the book, to which his attention was directed by Mr. Follett; that he did not observe them at the time of casting up the poll, and could not tell when they were made. Thursday, 28th Feb.

The poll-books were then again tendered.

Mr. Follett submitted that the evidence of Jacobs had strengthened his objection of the previous day, and he referred to a case from Ireland in which Mr. Harrison had been engaged, where Mr. Harrison had objected to the admission of the poll-book because not properly proved, and the objection was allowed. It was quite impossible that the Committee could say these were the poll-books.

Mr. Harrison:—The expense occasioned by the decision in the *Limerick case* (*d*) was so great that it was arranged between Mr. Adam and myself that such an objection as that pressed by Mr. Follett should be given up in all cases, and accordingly it has been abandoned at the last two general elections. It is admitted that the only proof of an election and return is the poll. But what constitutes an election and return? certain numbers cast up, and the final result in favour of certain candidates. Here the witness has proved the figures, and therefore the election and return.

Mr. Follett, in reply:—No case can be cited where a poll-book has been received, which has never been in the custody of the returning-officer, but in that of some other person who could not swear to it. It is impossible to say that a poll-book so treated is the same as that used at the election. He then read the resolution of the previous day, and added that the further evidence had left the case worse than it was before.

The Chairman inquired if there was any provision in the Reform Act for the custody of poll-books? He was answered in the negative.

The Committee resolved, "That the poll-books as produced be received in evidence."

That evidence in destruction of his vote may be given by

A witness named Tubb, who voted for the sitting member, having proved that he was employed as a door-keeper at his committee-room; that he was paid

(*d*) 1 Corb. & Dan. 89.

first at the rate of five shillings, and afterwards at the rate of seven shillings and sixpence per diem, the first of these sums being "much less than he could earn in his business as a printer;" Mr. Serjeant Merewether objected to this course of examination, on the ground that a voter cannot give evidence to affect his own vote, and that here he was proving his employment as an agent.

a witness, where it is not sought to impeach his title.

Mr. Harrison admitted that the cases had decided that a man cannot be called to destroy his own vote where his evidence would go to impeach his title to the property in respect of which the vote had been given, or his length of occupation of it; but it had never been questioned that a man might not, if he thought fit, give evidence of his own bribery. Here the payment is a compensation for loss of time, and that the resolution in the Grantham case has decided to be illegal (*e*).

The Chairman:—The man does not ask for protection, therefore I think that the examination may proceed.

The witness having further stated his being at his post by 8 o'clock in the morning, and his belief that he was not out of the place except when at the poll, and that he was paid for taking charge of the door, and keeping the house clean; Mr. Harrison asked "when were you paid?" upon which Mr. Serjeant Merewether pressed his former objection, accompanied with the observation, "that now it was clear the payment was not bribery."

The Chairman thought the evidence good, if the witness chose to give it.

Mr. Harrison:—The cases have never gone beyond the impeachment of title, but if success should attend this attempt to extend the principle to cases of this description, an excellent mode of managing elections would be established, it being almost impossible to prove

(*e*) 75 Journals, 435.

payment except by asking the persons themselves. The statute relating to agents(*f*) was passed to prevent candidates from benefiting by this species of corruption. That Act says, if a candidate employs these persons he shall not have their votes. The Irish Acts(*g*) provide, that not more than one barrister shall be employed by a candidate at an election. In Irish cases more than one barrister has been put into the witness box, that inquiry might be made if he had received a retainer(*h*).

The question was allowed to be put.

5th March. That a witness who has remained in the committee-room, with the view of excluding his own testimony, may be examined.

A question arose this day as to the admissibility of the evidence of Richard Wyatt, who had been in the committee-room on the first day for about ten minutes, and on Saturday, the 2d of March, (the fourth day), had remained in the room about three hours.

Mr. Follett here mentioned, that in the *Petersfield* case the rule as to the exclusion of the evidence of witnesses under such circumstances was declared to be inflexible(*i*).

A witness was then called by Mr. Harrison. This witness deposed that he had told Richard Wyatt on the first day of the Committee's sitting, that he must not come into the room; that no witnesses could be admitted, and that Wyatt knew well that the witness was placed there to prevent witnesses in the case from going in; the witness had been absent during the greater part of Saturday. This was positively denied by Wyatt. It appeared, however, from Wyatt's admission, that he had been very frequently in and out of the Petersfield committee-room, from which circumstance the inference was raised that he would not have given a preference to that room over the Oxford, being more interested in the proceedings before that Committee,

(*f*) 7 & 8 Geo. 4, c. 37.

(*g*) 1 & 2 Geo. 4, c. 58, s. 6.

(*h*) See *Dublin case*, Minutes, 27th Sept. 1831, and 8th Oct. 1831.

(*i*) So decided without argument.

unless some notice had been given him that witnesses were not admissible in the latter room.

Wyatt having been ordered to withdraw, Mr. Serjeant Merewether, in support of his objection to Wyatt's evidence being taken, cited the *Aylesbury* (*i*) and *Southwark cases* (*k*), and added, that if a person breaks the rules of the Committee, that is a question between him and the Committee, but the parties cannot use his evidence.

Mr. Harrison cited the *Middlesex case* (*l*), where Hill, a collector of taxes, and another person, were allowed to be examined, though both had been in the committee-room a considerable time.

The Committee came to the following resolution:

"The Committee, though admitting the rule, and wishing to enforce it in the strictest possible way, are of opinion that this witness must be examined, as they believed he had come into the room to avoid being examined."

(*i*) 2 Peckwell, 263, where the witness proposed to be examined was a Member of Parliament.

(*k*) Clifford, 108, where the witness had been in the committee-room during the four first days, and was ignorant, until he received the summons on the fourth day, that he was to be a witness. See also 3 Dougl. 229, 264. The rule does not apply to barristers, 2 Peck. 167, *Southwark case*.

(*l*) 2 Peckwell, 135. This case was cited at the suggestion of Mr. Serjeant Heath. The rule as laid down by Lord Glenbervie, vol. 1, p. 61, is as follows: "That when a witness is under examination, all those who are intended to be called on either side are directed to withdraw; after which, if they remain in the committee-room, their evidence will not be received." The rule pursued at this day is to give the notice either before or after the opening.

CASE IV.

BOROUGH OF CARNARVON.

The Committee was appointed on the 5th of March, and consisted of the following Gentlemen:

Sir Matthew White Ridley, Bart., M.P. for Newcastle, *(Chairman.)*

Sir George Staunton, Bart. M.P. for South Hants.
L. Oliphant, Esq. M.P. for Perth.
Edwin Ruthven, Esq. M.P. for Dublin City.
Sir Robert Frankland, Bart. M.P. for Thirsk.
C. Russell, Esq. M.P. for Reading.
Robert Palmer, Esq. M.P. for Berks.
John Brocklehurst, Esq. M.P. for Macclesfield.
Lord Viscount Cole, M.P. for Fermanagh.
William R. Cartwright, Esq. M.P. for South Northamptonshire.
John Fenton, Esq. M.P. for Rochdale.

Petitioner:—Major Owen Jones Ellis Nanney.
Sitting Member:—Sir Charles Paget.
Counsel for the Petitioner:—Mr. D. Pollock, Mr. Follett and Mr. Plunkett.
Agents:—Messrs. Dyson & Hall.
Counsel for the Sitting Member:—Mr. Harrison, Mr. Serjeant Merewether, and Mr. William Russell.
Agents:—Messrs. Lowe.

THE petition stated, that at the last election for the Borough of *Carnarvon*, in which Pwllheli, Nevin, Conway, Bangor and Cricceith shared, under the provisions of the Act 2 Wil. IV. c. 45, Sir Charles Paget, Knight, and the petitioner, were candidates.

That the bailiffs of Carnarvon were the returning-officers; and that David Rowlands and Griffith Davies were the bailiffs at the time of the election, acted as returning-officers, and took the poll.

That the bailiffs of Carnarvon were invested by the said Act with the power and duty of appointing deputies at Pwllheli, Nevin, Conway, Bangor and Cricceith, for the purpose of taking the votes of the electors entitled to vote at those places; and it then went on to state the appointments and names of the different deputies.

That at the election a majority of legal votes was given in favour of the petitioner, and that he ought to have been declared duly elected, and to have been returned accordingly by the said bailiffs at Carnarvon, inasmuch as many voters were improperly admitted upon the register, whose votes were given for Sir Charles Paget, and thereby occasioned him to have a colourable majority over the petitioner.

That the bailiffs of Carnarvon, in taking the poll at Carnarvon, and William Jones, their deputy at Pwllheli, in taking the poll at Pwllheli, not only rejected the votes of many persons entitled to vote at the election, and who tendered such votes in favour of the petitioner, but admitted many tenders to vote for Sir Charles Paget who were not entitled to vote at the said election, thereby diminishing the number of votes which ought to have appeared upon the poll in favour of the petitioner, and increasing the number in favour of Sir Charles Paget, so as to increase the colourable majority which Sir Charles Paget appeared to have over the petitioner at the close of the poll.

That in taking the poll at Pwllheli, the votes tendered for Sir Charles Paget, although not admitted as votes, were entered in the same column with the votes received for Sir Charles Paget and the petitioner, with certain words annexed, although the petitioner by his agents

requested and insisted that the same might and ought to have been entered in a separate column, or on a separate paper, so as to distinguish the votes received and taken at the poll from such as were only tendered and not admitted.

It then submitted, that in reckoning up the total amount of votes taken at the election, in order to ascertain which of the candidates had been duly elected, all votes tendered thereat, but not admitted and received, ought to have been omitted; whereas, on the contrary, the bailiffs of Carnarvon improperly and illegally, and contrary to and in defiance of the remonstrance and protest of the petitioner and his agents, insisted upon including the whole of the votes so tendered and entered, but not admitted and received, at Pwllheli as aforesaid, and did actually include such tendered votes in ascertaining the amount of the total number of votes polled at the election, whereby the colourable majority of Sir Charles Paget over the petitioner was considerably increased, and in consequence the bailiffs of Carnarvon improperly and unjustly returned Sir Charles Paget as duly elected, whereas the petitioner had a majority of good and legal votes, and was in fact duly elected, and ought to have been returned. It then prayed that the House would take the premises in consideration, and declare that the election and return of Sir Charles Paget was void, and that the petitioner ought to have been declared duly elected, and that the return might be amended accordingly.

Where tendered votes had been entered in the poll-books and cast up with the good votes, so as to give a majority to

It was proved without dispute that the deputy returning-officer at Pwllheli, after a long discussion between the agents of the candidates, had entered in the poll-books 67 tenders for Sir C. Paget, and 11 for Major Nanney by persons whose names had not been admitted into the register by the revising barrister, distinguishing them, however, by the words "*de bene esse*"

marked against them. He then cast up the poll at the end of each page of the poll-book, reckoning equally the good votes and tenders. When the bailiffs of Carnarvon cast up the whole poll they adopted, in defiance of the remonstrances of the agent for Major Nanney, the calculations that had been made by their deputy at Pwllheli. By thus including the tendered votes they gave a majority of nine to Sir C. Paget, and returned him accordingly.

the sitting member, the Committee determined that the petitioner was entitled to the return, but leave was obtained for the sitting member to petition within 14 days.

Mr. Pollock and Mr. Follett, for the petitioner, contended, that the return ought now to be amended, by inserting the name of Major Nanney for that of Sir C. Paget, and that Sir C. Paget might, according to the established rule in such cases, petition the House within 14 days to question the election, and they referred to the first *Bedfordshire* (*a*) and second *Middlesex* (*b*) cases.

Mr. Harrison and Mr. Serjeant Merewether insisted that the form of the petition was against the election as well as the return, and that it had been accordingly classed (*c*) by the House amongst petitions against elections, and that therefore they had a right, after admitting that the return was bad, to proceed to show that the election ought to have been in their favour, by proving that these 68 tenders had been improperly rejected from the register by the revising barrister. The petitions in the *Middlesex* and *Bedfordshire* cases had been against the return only, and not, as this, both against the election and return. Had these cases however been applicable under the old system of Parliamentary law, they were not so now, for by the 60th section of the Reform Act liberty was expressly given, upon any petition against an election or return, for any

(*a*) 1 Luders, 398.

(*b*) 2 Peck. 370.

(*c*) As to this division of election petitions into five classes, see the note to the 1st *Bedfordshire case*, 1 Luders, 401, and Rogers upon Committees, p. 60.

person defending such election or return to impeach the correctness of the register, by proving that in consequence of the decision of the revising barrister names were improperly inserted in, or omitted from it, and that the Committee should have the power of altering the poll accordingly. This case came precisely within that section, and it was in accordance with the general spirit of the Act, which was passed in order to diminish the expense of elections, that a sitting member should not be obliged to petition for a second committee, when the whole case might with much greater advantage be discussed before the first. In former times committees had power to examine into the whole poll; now their jurisdiction was confined to those votes upon it, that had been discussed before the barrister on objections or claims. Should they now decide to amend the return only, Sir C. Paget would be without any remedy, for an objection would at once be made to any petition by him against the election, that by the 60th section he had the power of proving the tenders to have been good votes on a petition against his return, and that having failed to do so, he could not, by the rules either of committees of the House of Commons or of municipal courts of justice, re-agitate the question.

Mr. Pollock observed, that there were no words in the Reform Act to the effect contended for by the other side, and that such a construction had never been put upon it by any of its numerous commentators.

The Committee determined that Sir C. Paget was not duly returned; that Major Nanney ought to have been returned; and that neither the petition nor the opposition to it were frivolous or vexatious. And the Chairman also stated, that in consequence of the representations of the counsel for Sir C. Paget, they had passed an additional resolution, "That the Chairman be requested to move the House that Sir C. Paget may

be at liberty to question the election by petition within 14 days (*d*)."

Mr. Pollock then called the attention of the Committee to the conduct of the returning-officers.

The Chairman informed him that they had taken it into their consideration, but that they were of opinion that they had not sufficient evidence before them respecting it to form any resolution upon.

(*d*) The Chairman accordingly moved the House to that effect on the same evening, on bringing up the Report of the Committee, when a short debate took place, in which Mr. Charles Wynne referred to the precedents of the *Denbighshire*, *Middlesex* and *Bedfordshire* cases; see *Mirror of Parliament* for the 6th of March. Leave was given accordingly, without any debate, on the following day, when the Clerk of the Crown attended to amend the return.

CASE V.

BEDFORD TOWN.

The Committee was appointed on the 5th of March 1833, and consisted of the following gentlemen:

Edward Ayshford Sanford, Esq. M. P. for West Somerset, *(Chairman.)*

James Halse, Esq. M.P. for St. Ives.
D. Gaskell, Esq. M. P. for Wakefield.
W. E. Gladstone, Esq. M. P. for Newark.
T. Duffield, Esq. M. P. for Abingdon.
Lord Viscount Lumley, M. P. for North Nottinghamshire.
George Wood, Esq. M. P. for South Lancashire.
Lord Wm. Lennox, M. P. for King's Lynn.
Sir W. W. Wynn, Bart. M. P. for Denbighshire.
E. Lister, Esq. M. P. for Bradford.
Edward Strutt, Esq M. P. for Derby.

Petitioners:—Electors.
Sitting Members:—W. H. Whitbread, Esq. and Samuel Crawley, Esq.
Counsel for the Petitioners:—Mr. Harrison, Mr. Serjeant Heath and Mr. Ryland.
Agents:—Messrs. Lowdham, Parke and Freeth.
Counsel for the Sitting Members:—Mr. Serjeant Merewether, Mr. Follett and Mr. Wm. Russell.
Agents:—Messrs. Vizard and Leman.

Petition.

THE petition, which was by electors in the interest of Captain Polhill, stated—that the election was held on the 12th and 13th of December 1832, and that William Henry Whitbread, Esq., Samuel Crawley, Esq., and Frederick Polhill, Esq. were candidates—and the return of Mr. Whitbread and Mr. Crawley.

That many persons who were not freemen, or entitled to vote as freemen, or who being freemen were not qualified in respect of residence within the borough, or the limit prescribed by the Reform Act, and many others who were not qualified under that Act as electors in respect of property, occupation or residence, procured their names to be inserted in the lists to be delivered to the revising barristers; and many other persons not qualified or entitled were improperly inserted therein by the town-clerk of the borough as persons entitled to vote as freemen, although the said town-clerk well knew or ought to have known that they were not resident within the borough, or within the limit prescribed by the Act, or were otherwise not entitled to be inserted in the register or to vote; and many other persons who were not qualified in respect of property, occupation or residence, or otherwise under the provisions of the said Act, were improperly inserted in the lists by the overseers. And many of such persons were retained by the barristers on the register, in many cases on the ground of no objections having been made to their insertion before the barristers in such lists and registers, and in many other cases on account of objections not having been made in writing, or of alleged or supposed irregularities in the form or mode or manner of making objections, or of the giving notice of such objections to such unqualified persons; and in many other cases on account of the persons who had made such objections (and by so doing had prevented others from objecting to such unqualified persons) withdrawing, or not supporting their objections.

That persons without any qualification had been inserted in the lists, and had been retained by the barristers, because no notice, or an insufficient notice, of objection had been given.

That many persons who were on the roll of freemen of the borough, and many persons who claimed to be entitled, in respect of property, occupation and residence, to be electors under the provisions of the said Act, but who were respectively subject to legal incapa-

That persons subject to legal incapacities were inserted in the lists, and for the same

reasons suffered to remain there by the barristers.

cities, or disqualified by the receipt of alms or parochial relief, and who were not entitled according to the provisions of the Act to be registered or to vote, procured their names to be inserted in the lists of voters as freemen or other electors, or were improperly inserted and retained in the lists, and registered by the revising barristers, upon the alleged or supposed ground that objections were not made to the retaining such persons on the register, or that objections if made were not made in writing, or were not made in the proper form and manner, although it was notorious that such persons were disqualified, and that the persons objected to were present, and also the persons who could prove such disqualifications, and were ready to give such evidence, or could have been immediately produced, and such disqualifications were notorious to the barristers, but such disqualified persons were nevertheless left on the register, and no scrutiny of votes being by the said Act allowed by or before the returning-officers, many persons so not entitled as aforesaid, and legally disqualified, voted at the election in favour of Mr. Crawley.

That persons who had become disqualified after the registration were allowed to vote.

That many persons who were registered as electors, as freemen, or in respect of property, occupation and residence, by the revising barristers, became disqualified as electors at the last election, between the period of the register being so revised and signed by the barristers, and the time of the holding of the election, by having ceased to reside as freemen within the borough, or the limit prescribed by the Act, or by having parted with, sold, or otherwise ceased to be possessed of, or to occupy the property in respect of which they were registered, or to reside within the borough, or the limit prescribed by the Act, and thereby ceased to possess the title or qualification, whether as freemen or other electors, in respect of which they had been registered; and others were disqualified by receiving bribes for

giving their votes at the election, or by receiving alms or parochial relief, or otherwise, after the revising and signing of the registers, but all such persons were nevertheless allowed to vote, inasmuch as the returning-officers declared that they had no power of scrutinizing or inquiring into such votes.

That the return had been made by a majority of unqualified persons.

It also contained charges that persons not on the register or lists were allowed to vote, and also charges of treating and bribery, which were not persisted in; and stated that although Mr. Crawley had obtained an apparent majority over Captain Polhill, yet the majority of legal electors and voters was in favour of Captain Polhill, and that the freedom of election had been violated, inasmuch as the constituency intended to be established by the Reform Act had not returned the member, but the election and return had been made by persons not qualified to be electors according to the provisions of the Act, or who were disqualified by the provisions of the said Act and other Acts of Parliament, the custom of the borough, and the law of Parliament, from voting.

Prayer.

And it prayed the House to declare the election and return of Mr. Crawley wholly null and void, and that Captain Polhill was duly elected, and ought to have been returned.

The poll.

At the close of the poll the numbers were, for Mr. Whitbread 599, Mr. Crawley 486, and Captain Polhill 483.

Mr. Harrison, on opening the case for the petitioners, stated, that this was a simple case of scrutiny, the principal cases in which would arise from the mistakes of the town-clerk, who put in the list of freemen all the names of freemen in the corporation books, many of whom were dead, many paupers and idiots, and a very large number of whom resided at a much greater distance than seven miles from the town of Bedford.

Notices of objection to a great many of these had been given by Mr. Eagles, an attorney in the interest of Captain Polhill, but he had omitted to insert his place of abode in them. The revising barrister decided that these notices were invalid. Consequently all the names he had objected to were suffered to remain on the lists, and paupers, and residents in London, and other distant parts, who were thus inserted in the register, had come up and voted for Mr. Crawley, and thus given him the majority over Captain Polhill.

The town-clerk was then called, and produced the poll; he stated that at the close of the poll it was delivered to him by the returning-officer, and had since, with the exception of about two hours, remained in his custody, in an open room, to which his clerks and other persons had access. During the two hours it had been inspected by the agent for one of the sitting members out of his sight, but in the presence of one of his own clerks, in another room in his office. After this inspection it was returned to him, and sealed up in an envelope; the seals had remained unaltered; and he stated that he believed it to be in the same state as when it was delivered to him, and that he had taken as much care of it as of any public documents committed to his charge.

An objection was then taken to the admissibility of the poll as evidence, which, after a short argument by Mr. Russell on the part of the sitting member, and Mr. Ryland for the petitioner, was overruled by the Committee, who intimated that in their opinion the poll had been sufficiently proved (*a*).

Flight's case.

The petitioners now proceeded to object to the vote of Thomas Flight. The town-clerk proved that he made out the list of freemen by inserting the names of

(*a*) See the arguments on this subject in the *Oxford* case, *ante*, p. 98, *et seq.*

all the freemen from their admission as recorded in the books of the corporation, describing them and their residences as they appeared there. If, for instance, he found in an admission 40 years ago a freeman described as of London, he inserted him with that description in the list in his possession. The list was published as required by the Reform Act; and several notices of objection against persons inserted in it were delivered to the town-clerk. Some of these notices were signed by Mr. Eagles, an attorney. In consequence of them he made out and published a list of the freemen objected to. He delivered these notices to the revising barristers, but they were not all returned to him. He was then desired to produce some of the notices he had in his possession.

Committees have power to question the decision of the barristers on the informality of the notices.

Mr. Russell objected to their being produced. Under the Reform Act this court had not jurisdiction to enter into the notices relating to the first class of voters. The 59th section enables any person whose name has been omitted from the register in consequence of the decision of the barrister to tender it at the election, and directs that the tender shall be entered on the poll-book. By the 60th section the correctness of the register may be impeached before a Committee, by proving that in consequence of the decision of the revising barrister the name of any person was improperly inserted or retained in, or the name of any person who tendered his vote at such election improperly omitted from, the register. The 50th clause enacts that the barrister shall retain on the lists of voters the names of all persons to whom no objection has been made *in the manner thereinbefore mentioned.* The barrister found no objection, for a defective objection was no objection. He had therefore no power to expunge the names from the list. He had made no decision, for there was nothing for him to decide: and the Committee could only enter upon those cases in which the barrister had made a decision. It was clear upon consideration of

the 60th clause, coupled with the previous clauses defining the jurisdiction of the barrister, that the word *decision* means a decision upon the merits, and not a decision upon a mere point of form.

Mr. Ryland:

This objection is premature. It is said this is not a decision on the merits; this was a decision by the barrister; but no evidence has been received on that point. How can the Committee come to that decision before it is known what took place before the barrister? The 50th section says, the barrister shall retain on the list of voters the names of all persons to whom no objection shall have been made. Until further evidence has been given, the Committee cannot say whether any objection was made (*b*).

Mr. Russell:

It was expressly admitted, by the petitioners' form of objecting to these votes, that it was held that no objection had been made.

Committee:

It is understood that Mr. Harrison stated, in his opening, that this class of voters appeared on the list as not objected to at the time of registration, and that the barrister on that account allowed them to remain on the list.

Merewether, Serjt.

This Committee has no jurisdiction which the barrister had not, and the barrister could not enter into the merits, the objection being informal.

The Committee decided that they had the power to question the decision of the revising barrister as to the formality of the notice of objection.

(*b*) The form of objections to this voter, and to the others in the same class, was, "Improperly inserted by the town-clerk in the list of freemen delivered to the revising barrister. Improperly retained in the register by the revising barrister. Not residing at Bedford, or within seven miles thereof, for six calendar months next previous to the last day of July 1832, or at the time of signing the register. See also the petition, *ante*, p. 113.

The town-clerk, on being recalled, stated that he had known Mr. Eagles from his childhood, and that he was a person well known in Bedford, and that he had personally delivered the notices to him; that he attended before the revising barristers, and gave them the lists of freemen and of objections. The notice of objection was signed "E. Eagles," without specifying the objector's place of abode.

The entry of this vote on the list of objections was, "Thomas Flight, junior, 318, Holborn, London."

Mr. Ezra Eagles was then called, and proved the proceedings in the barrister's court, and the decision of the barrister, that he could not enter upon the case of this voter on account of the invalidity of the notice.

Evidence was then tendered to prove Flight's residence distant more than seven miles from Bedford. This course was objected to on behalf of the sitting member.

Mr. Follett for the sitting member:

It is essential to the validity of a notice of objection, that it should contain the objector's place of abode.

The object of the Act is to substitute the register for the discussions which formerly took place before the returning-officers and their assessors at the election. The question is, whether the barrister was mistaken in his decision that he had no jurisdiction to enter into the merits of the objection? In the form of notice given in Schedule (I), No. 5, the name of the person is signed, and the place of his abode written, thus, "*A. B.* of (*place of abode*)." Is then this notice, omitting the place of abode, a notice within the Act? That is the only point to be decided, for nothing arises on the fact of Mr. Eagles' being well known to the town-clerk, which was a mere accidental circumstance. The cases which have been determined on the Annuity Act, 53 Geo. 3, c. 141, are in perfect analogy to the present. By the 2d section of that Act it is enacted, that within 30 days after the execution of the deed a memorial of it should be enrolled, containing, *inter alia*, the names of the witnesses to it, "in the form or to the effect following;" then follows

a form; and under the head "Names of Witnesses," are "*E. F.* of ——." Under this Act it was held, in the case of *Darwin* v. *Lincoln* (*c*), that the annuity was void, because the place of abode of a witness to the annuity deed was not inserted. *Smith* v. *Pritchard* (*d*) is to the same effect. *Cheek* v. *Jeffries* (*e*) shows also the strict adherence to form which courts of law require in cases of this description. The Reform Act requires the notice to be given in the form specified in the schedule, "or to the like effect." No notice can be given to the like effect, if it omits the place of abode. It may be very important that a person should know who makes the objection. If this form is not strictly adhered to, most extraordinary powers will be given to overseers. There is at present too much power in their hands, and they are not a class of men who ought to be entrusted with more.

Mr. Harrison for the petitioners:

Unless the Reform Act and the Annuity Act are upon subjects of a similar description, the decisions upon the Annuity Act cannot be cited in favour of the other side. Annuities are not encouraged; they are only not usurious: the simplest objection has been always permitted to destroy them. Upon the Reform Act, on the contrary, of which the object is to create a new and more perfect constituency, the most liberal construction ought to be put. Unfavoured as annuities are, however, the construction of the judges in these cases was so repugnant to the spirit of the Legislature, that a special Act, the 3d G. 4, c. 92, was passed in order to remedy the mischief that would have resulted from their decisions. That Act, after reciting that grants of annuities had been, in proceedings by summary applications to courts of justice, which could not be reviewed in any superior court,

(*c*) 5 Barn. & Ald. 444.
(*d*) Ibid. 717.
(*e*) 2 Barn. & Cress. 1.

deemed null and void, on the ground that no description of the place of abode of the witnesses had been inserted in the memorials, declares, that thereafter no further or other description of the witnesses should be required in the memorial besides their names. Admitting, however, that the Acts have the slightest similarity to each other, where, in the Annuity Act, is there a clause relating to misnomers and other inaccuracies like the 79th section of the Reform Act? Inaccuracy is a much stronger case than an omission: for the parties may be misled by it. There is nothing in the Act to require the overseers to keep the notices; if they choose they may destroy them directly they have inserted the names objected to in the proper lists. To prevent abuse the Act must have an enlarged and liberal construction; if, instead of this, a series of petty questions and mere quibbles are to be raised upon it, the effect it will have will be most pernicious.

Mr. Follett in reply:

It is difficult to discover how the two Acts are distinguishable: the Annuity Act provides that annuities may be granted under certain regulations; the Reform Act that objections may be made under certain regulations also. If annuities are not favoured by the former Act, what can be found in the Reform Act to encourage objections? on the contrary, a strict form is prescribed in which they are to be made, and which ought to be observed. The passing of the 3d Geo. 4, shows that the decisions in *Darwin* v. *Lincoln* and *Smith* v. *Pritchard* were correct; had they not been so, an Act of Parliament would not have been necessary to alter the law on the subject. If the provisions of the Reform Act are found inconvenient, a new law may be passed to remedy them. In the form of claim set out by that Act the place of abode is required to be stated, and the lists cannot be made out without it. If the claimant's place of abode is to be stated, why should not the same strictness apply to the name of the objector. The 79th section

does not remove the defect in this notice; it relates only to misnomers or inaccurate descriptions. Here is no misnomer or inaccuracy, but an omission. If the construction contended for on the other side were adopted, the overseers and town-clerks, would have a power which they ought not to possess, of deciding what notices were good and what bad; and the party objected to would not have, as he ought, the power of knowing who had objected to his possessing the elective franchise.

The Committee resolved, that the notice of objection was informal, and that the barrister's decision was right(*f*).

7th March. After some discussion between the counsel, the Committee desired Mr. Harrison to argue the question, whether they had power to examine into the validity of votes not objected to before the barrister, which he accordingly did. After his argument they expressed their wish that the case of some person should be entered upon, to whom no notice of objection whatever had been given, and upon which consequently no decision of the barrister had been pronounced. The case of Joseph Cogan was accordingly taken by consent. Mr. Serjeant Merewether objected to the case being entered upon on the ground of the want of jurisdiction of the Committee. Mr. Serjeant Heath supported their jurisdiction, and Mr. Serjeant Merewether replied. The arguments of Mr. Harrison and Mr. Serjeant Heath differed in no material respect from those used by Mr. Harrison in the *Oxford case* (*g*), except that Mr. Serjeant Heath, to show the ill consequences that would result in the way of precedent from the decision that the powers of committees were abridged by the 60th clause of the English Reform Act, referred to the Irish Reform Act, 2d & 3d Will. IV. cap. 88, where the only express power given

Joseph Cogan's case.

Committees are precluded from entering into the question of votes, where the names appear on the register, and they have not been objected to before the barrister.

(*f*) On the 8th of March the Committee resolved, that *Flight's case* was not to be again gone into.

(*g*) *ante*, p. 76.

them of examining into votes at all was by the 59th section, which only (as he insisted) applied to the votes of persons disqualified by holding situations under Government (*h*), so that hardly any question on Irish elections could ever come before a committee; and he also submitted, that as the barrister could not remove the name of any person not objected to, if committees had not the power of examining into unobjected cases, the Duke of Bedford, or an inhabitant of Jamaica, might vote and decide the return of a member of Parliament. The arguments of Mr. Serjeant Merewether differed little from those he made use of on the same subject in the *Petersfield* case (*i*), except that he cited the cases of *Cates* v. *Knight* (*k*), and *Ex parte Benson* (*l*).

The decision of the Committee was, "that it being admitted to the committee that no objection was made to the voter before the barrister, and his name appearing on the register, they deem themselves precluded from entering into the question of his vote."

8th March. Thomas Barker's case. The receipt of alms after the registration, but before the day of election, is a disqualification.

The next case was that of Thomas Barker, who was proved to have received parochial relief after the completion of the register, but before the day of polling.

Mr. Russell for the sitting member:

The votes of persons objected to on account of the receipt of alms during the period between the completion of the register and the day of election are not within the scope of the Committee's inquiry, for not only have they been left untouched by the decision of the barristers, (which alone could let in the jurisdiction of a select committee according to the 60th section), but the Act has plainly made such a receipt of alms no ground of disqualification, and of course therefore no ground of inquiry for the purpose of impeaching the register. Upon this point it is clear that the words

(*h*) See the arguments on this clause in the *Longford case*, post.
(*i*) *ante*, p. 51.
(*k*) 3 T. R. 442.
(*l*) 1 Deac. & Chit. 324.

of the Act have so distinctly substituted the essentials of a title to registration, for the former essentials of a title to vote, that the fact of being registered must be of necessity conclusive of the right to vote, except in those cases where the appeal is given to a Committee by the 60th clause, within which this case cannot be brought. This distinct substitution can be shown in the following way: Wherever under the old law of elections the possession of any particular ground of qualification, or the absence of any given cause of incapacity, was limited to a certain period previous to the day of election by the Reform Act, the possession of that ground of qualification, or the absence of that cause of incapacity, is limited to a similar period previous to the day of making out the lists. If, then, you were to insist on the voter's proving that he continued so to be entitled not merely up to the day of making out the lists, but up to the day of election, you would be imposing on him a far larger proof of title than he ever was required to make under the old law. Thus when, by the 36th section, it is provided that no person shall be entitled to be registered who shall have received parochial relief or other alms within 12 months before the last day of July, (the day for making out the lists which are to be submitted to the barrister), there is a distinct substitution of the last day of July for the day of election, for 12 months previously to which, under the former system, a voter must not have received alms, and the limited time of absence of disqualification must be the same in one case as in the other. Take, for instance, the case of a voter who had not received any alms for 12 months before the last day of July, and suppose no election to take place till the last day of November, if it is necessary also to show that that man had not received alms between the last day of July and the day of election, you would require him to prove a 16 months' instead of a 12 months' title. Can this be

termed a beneficial construction of the Act? Is it a construction in favour of the franchise?

The provisions of the 32d and 33d clauses, as to the reserved rights, seem to establish this argument. They direct that every voter in respect of any of the various rights conferred by those clauses, (whether as a freeman or as an inhabitant paying scot and lot or otherwise), is, in order to be registered, to be as fully entitled on the day of making out the lists as he formerly was required to be on the day of election itself. Here is a distinct substitution of the last day of July for the day of election: the measure of title which used to be dependent on the state of the voter's right at the day of election, is now to depend on the state of his right at the day of making out the lists. Thus, therefore, an inhabitant paying scot and lot, who was formerly by the law of Parliament required to have been such for six months previous to the day of election, is required by this clause to have been so for six months previous to the day of making up the lists, which are to be submitted to the barrister. Are you to superadd as a further requisite, that he shall be so up to the day of election, an additional period of perhaps many months? Is this the way in which rights are to be reserved? Can that be called a reservation which requires a man to show that he has a 10 months' title, where a six months' title used formerly to be sufficient? The words of the Act are, however, so express, that they exclude so absurd a construction, for they say that the person whose right is meant to be reserved shall vote, if registered; and his right of registration is to depend upon his being as well entitled on the day of making up the lists as formerly he must have been on the day of election itself. By these clauses a positive character is given to the register, showing it to be conclusive as to the right to vote. This character must be uniform, and applies equally to all rights under the Act,

whether reserved or original, and with respect to incapacity from receipt of alms, there is clearly no distinction between reserved rights and new rights. *Argumenta ab inconvenienti* do not apply here, (though we do not admit that any inconvenience would arise, or the operation of the Act be otherwise than equitable): it is a mere question of positive construction, nor is there any room to talk of what the Legislature ought to have intended, for if it had any such intention as is alleged on the other side, *quod voluit non dixit.*

Mr. Harrison for the petitioners:

If the construction contended for on the other side is to be admitted, the Reform Act will introduce abuses instead of correcting them; for it would authorize a voter, after he has once got on the register, to accept bribes to any extent. The law says that a man who has taken a bribe or availed himself of parochial relief is disqualified from voting, and yet by their construction the votes of both these classes of men would be good and valid. Such a construction, however, is inconsistent with the other parts of the statute. How can a man who has received alms, in answer to the 3d question which the 58th section permits to be put at elections, say that he has the same qualification then for which his name was originally inserted in the register? It is clear, from this question, that the Legislature contemplated that the voter should have, when he voted, the qualification for which he was registered; but the pauper and the bribed man have no qualification at all at the time of election. In the *Gloucestershire case* (*m*), it was held that a person who refused to take the bribery oath when he first came to the poll, and upon tendering himself afterwards to take the oath had been rejected, might be permitted to take the bribery oath, and vote at any time during the poll.

(*m*) See that case, p. 30.

Mr. Russell, in reply:

The 3d question allowed by the 58th section points merely to a continuance of a positive and particular qualification. This is not a question of qualification but of disqualification; and it is clear, at any rate, that it is not a question of fraud. Fraud, such as bribery, stands on entirely different grounds; it is an offence *contra bonos mores*, and of itself renders the vote bad, independently of any enactment. Here we have an express enactment, on which a Committee is called to put a construction. It is true that this is a remedial Act, but it is to be construed remedially and beneficially towards the voter, and so as to extend, not abridge, the franchise. The construction which we contend for is an equitable construction; for the pauper will be excluded from the register next year, so that the only difference as to the individual will be the year in which the disqualification will operate, and there will be none at all as to the candidates, because in practice the votes have been, and will continue to be promised, and the calculations as to success made, before the registration, when it is admitted that the vote would be good. Having fulfilled the conditions of the Act up to the period of registration, the title of the voter is complete, and inquiry ought not to extend beyond that time.

The Committee resolved, that the evidence of William Chapman (the person who had proved the relief) might be received. Mr. Follett then inquired "if it was the opinion of the Committee that the receipt of alms during the period between the registration and the poll disqualified the voter." The Chairman said, "that was implied in the decision, though the question arose upon the admissibility of evidence." The counsel for the petitioners then stated, that the fact of the receipt of alms having been admitted, they had no further evidence to offer. The Committee resolved, "that the vote of Thomas Barker was a bad vote."

Kemp's case. Employment as a parish labourer is an acceptance of parochial relief, and disables the person so employed from voting. See Introduction, *ante*, p. 18.

In the case of Wm. Kemp, the question was first raised as to whether employment by the parish in labour, at an inferior rate of wages to what would be given by individuals, was to be considered such "parochial relief or other alms." It appeared from the evidence in this and several other subsequent cases which were all decided without argument upon the same principle, that all the parishes in Bedford are united by a local Act, and that there were two account books kept by the guardians of the poor appointed under it, one called the "labour" the other the "relief" book. Whenever an application was made to the guardians for relief, the applicant, if capable of working, was employed in digging or some other work found by them, and was paid at certain fixed rates; these rates were 1 *s.* 2 *d.* a day to a single man; a married man received, according to the number of his family, 1 *d.* or 2 *d.* a head more. An account was kept in the labour-book of the sums thus paid, the accounts on the relief-book being confined to the payments by way of relief, where no labour was given in return. The ordinary rate of labour at Bedford was 2 *s.* or 2 *s.* 6 *d.* a day. The voter, in this case, having a family, had received 1 *s.* 4 *d.* a day, and had been employed by the parish in digging.

Mr. Ryland, in support of the objection, argued that the relief given was in complete unison with the directions of the statute of the 43d of Elizabeth, which directed the overseers to find work for the poor. It was impossible to contend that it was not relief, for the work was given only to those who applied for it, was not necessary for the use of the parish, except so far as keeping the poorer class in employment in obedience to the statute, and was not paid for according to the value of the labour that was performed, but according to the number of the family of the labourer.

Merewether, Serjt. *e contra*, insisted that this was a new question which had never yet been decided in any

They are all collected in Rogers on Elections (*c*), and no breach of them has ever been attempted to be defended before any Committee. In the only case in the Journals (*d*), where two peers had voted in an election for the city of Winchester, their votes were abandoned by the counsel for the party in whose favour they had been given. How then can the vote of the Marquis of Tavistock be supported, who not only was a peer at the time that he polled, but was so conscious of its invalidity himself that he was anxious to have it taken off the books?

Mr. Russell:

Everybody must acknowledge the good feeling which actuated the noble individual in question in wishing to have his name withdrawn from the poll, believing, as he evidently must have done from the terms of his letter, that the writ of summons had issued, and that he was a peer of the realm at the time that he wrote to the returning-officer; in both of these points, however, he was mistaken. The writ of summons had not then issued, and it is notorious that no writ of that kind was issued till the 15th or 16th of January, but even if it had issued he would not have been a peer until he had taken his seat in Parliament. In *Lord Abergavenny's case* (*e*), the question was, whether a private person, who had been called to the House of Lords by writ, but died before he took his seat, was a baron or not, and it was resolved by the Lord Chancellor and Judges, that the direction and delivery of a writ did not make a man a baron or noble until he came to Parliament, and there sat, according to the commandment of the writ, for until that, the writ did not take effect. The decision in this case has never been disputed, and without specifically

(*c*) Chap. 3, pp. 85, 86.
(*d*) 10 Journ. 447.
(*e*) 12 Rep. 70.

referring to the authorities collected by Mr. Cruise (*f*) on this subject, it is well known that in order to establish a title by descent to a barony created by writ, that proof must be given of the first peer having sat in Parliament under it. Unless, therefore, the Committee shall be inclined to decide in opposition to all previous authorities, the Marquis of Tavistock must be considered to have been a commoner at the time that he voted, and his vote must be held to be good.

Mr. Ryland in reply:

There is no intention whatever on the part of the petitioner to impute any improper motives to the Marquis of Tavistock, but the question still remains unaltered. He was a peer at the time that he voted, and therefore his vote must be struck off the poll. The authorities that have been cited only refer to cases of descent. We admit that for certain purposes he was not a peer, but can any authority be produced that he was not a peer so as to be incapacitated from voting at the election of members of the House of Commons. If that was the law, every eldest son of a nobleman would retain his right of voting at elections after his father's death, until he chose to take his seat in the House of Lords, although he would immediately become entitled to every privilege of the peerage. It never could be contended that the same individual ought to possess every right of a peer, and every right of a commoner, at the same time, and yet such would be the necessary consequence of the positions supported on the part of the sitting member.—The Committee determined that the vote of Lord Tavistock was a good vote.

13th March. George Westropp's case.

This was the case of a tender, the voter having been struck off the list by the decision of the revising barrister. *Primâ facie* evidence was given of his qualifica-

(*f*) Cruise's Digest. vol. 3, tit. 26, sec. 52, *et seq.*

tion, and proof was also given of the case having been heard before the barrister, when it appeared, on cross-examination, that the overseer of a parish called Rushingworth had been present, and given evidence. Mr. Serjeant Merewether then said, that in consequence of the former decision of the Committee in the case of Thomas Lawson he could not ask, without the consent of the other side, (which was refused,) what was the effect of the evidence of this overseer, but he requested permission from the Committee that the case should stand over till the next day in order to produce him, he having been served with a Speaker's warrant, but not having been actually brought up to town by the sitting member, who was unaware, from the mode of proceeding adopted on the other side, that it was their intention to enter upon the tendered votes at this period of the investigation. The Committee granted this permission; but at the same time the Chairman intimated that they expected no similar application would be afterwards made, but that the parties would be prepared to go on with the different cases as they might be brought forward on either side. The Committee also inquired when this witness could be brought up, and being told that he was expected in London before one o'clock the next day, the Chairman stated that they would proceed with *Westropp's case* the first, after one o'clock the next day. This case was never further pursued, as the next day the petition was abandoned.

Cross-examination as to what an overseer stated before the barrister, not allowed. Leave under the circumstances given to postpone a case partly heard.

This was the case of an alien. The evidence produced to prove the alienage was that of a brother of the voter, and of another witness who had known him when an infant in Germany, and afterwards in England. The evidence of both these witnesses was of a very confused description; and after hearing Mr. Follett in support of the objection, who cited *Barbre's case*(*g*); and Mr.

Godfrey Levi's case. Case of an alien.

(*g*) 2 Peck. 118, *Middlesex case.*

Ryland in support of the vote, who contended that there was no proof that one of the parents of the voter was not an English subject, in which case he would have been so, the Committee determined the vote to be good.

On the 14th of March, the counsel for the petitioner abandoned their case. The Committee thereupon resolved, "that Mr. Crawley was duly elected and ought to have been returned; that neither the petition nor the opposition to it were frivolous or vexatious." These resolutions were duly reported by the Chairman to the House the same evening; and the report proceeded further in these words, "That the said Committee have also to inform the House, that they have altered the poll taken at such election, by striking off Thomas Barker, William Kemp, &c. (42 names) as not having any right to vote."

END OF PART I.

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of the numerous cases of pauperism that had come before Committees of the House. In the statute of Elizabeth an express distinction had been made between the work which all persons who had no means to maintain themselves were to be set to, and the necessary relief of the lame, impotent, old, blind, and such other among them who were poor and unable to work (*n*). The relief which was mentioned in the former cases on this subject, and in the 36th section of the Reform Act, must mean the "relief" mentioned in the statute of Elizabeth. That relief clearly had not been given to this person, and he was not therefore incapacitated even by the Reform Act, or by any former law or usage, from voting at an election. A contrary decision would lead to a succession of intricate questions; for every parish must at times employ labourers, and doubts would be raised in all such cases whether the labour was for the purpose of employing the person for the benefit of the parish, and for that purpose reference must be constantly had to the amount of wages paid for it, which must vary with every season, and be dependent upon a variety of contingencies impossible ever to demonstrate with certainty.

The Committee decided that the vote of Wm. Kemp was bad (*o*).

Relief by sending to a lunatic asylum at the parish expense, disqualifies from voting.

The voter was objected to as a pauper. He had since the 31st of July become a lunatic for a short time, and been placed in a lunatic asylum at the expense of the parish.

Mr. Ryland contended that lunacy was a species of unavoidable accident, like the fracture of a limb, as in *Hazell's case* (*p*) before the Colchester Committee, and therefore did not disqualify.

(*n*) See 43 Eliz. c. 2, s. 1.
(*o*) See 2 Barn. & Cress. 324, *Rex* v. *Collett*.
(*p*) 1 Peck. 508.

The Committee determined the vote to be bad.

10th March. Reuben Hedge's case. Employment by the parish of the children of a voter, at a rate of wages lower than the ordinary scale, is a disqualification.

The overseer of the parish of Willington proved that the voter's two sons, both of them being under the age of 14 years, had been paid by the parish half-a-crown a week for labour, which was sixpence less than they would have received from individuals. He also stated that it was the custom of the parish to pay all the boys of labourers in the same way after they were 10 or 11 years old, and to send them found to the farmers in rotation. The voter himself was a brickmaker, earning generally 14 *s.* or 15 *s.* a week, and was able, without assistance from the parish, to have maintained the boys, who had themselves applied to the overseers for employment.

Mr. Ryland having been heard against the vote, and Mr. Serjeant Merewether in support of it, the Committee determined that it was bad.

8th March. Wilshire's case. The acceptance of parochial relief in cases of cholera disqualifies from voting.

On the appearance of the cholera morbus in Bedford, a board of health was formed, of which the guardians of the poor were members. Pecuniary relief and medicines were found for those afflicted with the disease out of the parochial funds in the hands of the guardians of the poor, and they were attended by the parish surgeon. The relief was given them in the same manner, in proportion to the number of their family, as the payment for the parish labourers. The voter, who was a married man, had received pecuniary relief of 8 *s.* a week from the 16th of October to the 6th of November, whilst he was afflicted with the disorder; he had received no other parochial relief, and although the sums paid to him were entered in the relief-book kept by the board of guardians, yet a special memorandum was made against them, (as was done in all similar cases), that they were paid in a case of cholera.

Heath, Serjt., in support of the vote:

The relief which Wilshire has received is not the

parochial relief given on ordinary occasions, which alone, by the law of Parliament, would disqualify him from giving his vote. The relief which is given on extraordinary occasions, such as the breaking out of a plague or general infectious disorder, never has been held to disqualify a voter. In the *Cricklade case* (*q*), when the small-pox was committing similar ravages in our island to those the cholera has lately done, a Committee of the House of Commons resolved "that the persons who submitted themselves or their families to be inoculated, in the year 1783, by the invitation of the parish of Cricklade, and received relief in consequence of such inoculation, were not thereby disqualified from voting at the last election." In the *Cirencester case* (*r*), another Committee came to a similar resolution, that persons who were admitted, or any part of whose families had been admitted, into the pest-house on account of the small-pox, without receiving any other parish relief, were not thereby disqualified from voting. In the *Colchester case* (*s*), a person who had met with an accident, and had been attended by a parish apothecary gratis, was not held disqualified. This case is a stronger one than any that has occurred before, because to prevent the spreading of the cholera, boards of health were formed in every part of the kingdom, with almost unlimited powers, by orders in Council, under the provisions of a special Act of Parliament (*t*), who might not only afford relief, but might in many cases oblige persons to accept it. It would be a cruel aggravation of the sufferings of a person afflicted with so severe a malady, that he should be deprived of his electoral franchise on account of receiving relief which he had not the option given him of declining.

(*q*) 2 Luders, 364.
(*r*) 2 Fraser, 453.
(*s*) Hazell's case, 2 Peck. 508.
(*t*) 2 Will. 4, cap. 10.

Merewether, Serjt.:

There is a clear distinction between the present, and the *Cricklade* and *Cirencester* cases. There, in order to prevent the spread of the small-pox, persons voluntarily submitted themselves and their families to inoculation, and the principle of the decisions in those cases was, that a man was not to lose his vote because he had for the public good exposed himself to a disease. The cholera differs in nothing, except its virulence, from other diseases to which every man is subject, and in which it has been decided, over and over again, that if he receives medical relief from the parish, he disqualifies himself from voting for a year. Here the relief, both medical and pecuniary, was from the parish, and distributed in the same way as all other parish relief.

The Committee decided that Robert Wilshire's vote was bad.

10th March Clark's case. Evidence to show that relief in cholera had been received in consequence of a proclamation of the board of health, that it would not disqualify from voting, refused to be admitted.

On the Monday following, on the case of Wm. Clark being gone into, it was proved that he had received similar relief.

Mr. Harrison and Serjt. Heath, in support of the vote, proposed to call evidence to show, that on the first appearance of the cholera many of the poorer voters refused to accept any relief for fear of losing their votes at the next election; that the board of health, which was composed of gentlemen of both political parties, then published a proclamation, stating that those who received relief for the cholera would not be deprived of their votes, and that in consequence of it a great number of persons labouring under bowel complaints and cholera, who would not otherwise have availed themselves of the medical and pecuniary assistance which the board offered, came forward and accepted it.

Merewether, Serjt., objected to this evidence, on the ground of irrelevancy, the question that the acceptance of relief in cases of cholera disqualified the

voter having been decided in the previous case of Wilshire.

The Committee determined that the evidence could not be received, and, upon its being admitted that the case could not be distinguished from that of Wilshire in other respects, decided that the vote of John Clark was a bad vote.

John Cavit's case. The occupier of one of the almshouses belonging to the Bedford charity is not disqualified from voting.

The objection to this voter, who claimed as an inhabitant householder, was, that he had received the benefit of Harpur's charity. The original foundation of this charity, and the class of persons amongst whom it was distributed, are very fully set out in the *Bedford case*, in the third volume of Douglas's Reports (*u*). Since the occurrence of that case, in which it was decided that persons receiving the benefit of the charity were not disqualified from voting for the town of Bedford, its funds had very considerably increased, and several private Acts of Parliament for their administration had been passed. Under one of these, alms-houses were built which were allotted as dwelling-houses, according to the terms of the original foundation, to "poor decayed householders." These persons, of whom the voter was one, paid neither rates nor taxes, which it was stated were never charged upon these houses; they received 15*s.* a week pension, and 3*l.* a year for clothing; were provided with medical attendance when sick at the expense of the charity; and were removable at the discretion of the trustees by whom the funds of the charity were administered. They were also stated to possess in some cases a small independence of their own, in addition to what they received from the charity.

Mr. Ryland:

Since the determination of the Committee in the *Bedford case*, reported by Lord Glenbervie, the situa-

(*u*) 3 Douglas, 128.

tion of the persons who receive the benefit of this charity has very materially altered. The class of persons who were in that case determined not to be disqualified from voting did not live in alms-houses, did pay parish taxes, were of the middling class of people, and received only one annual donation from the charity. That is not the case now; the voter here lives in an alms-house, he pays no rates, no taxes, he is attended in illness by an apothecary paid by the trustees, he is clothed, and derives his subsistence by weekly payments from those trustees, and at their arbitrary and absolute discretion he is liable, at a moment's notice, to be turned from his house, and deprived of the means of support. The question here is, whether he has received such alms as would by the law of Parliament disable him from voting. The principle on which such a disability was originally founded is laid down by Serjt. Heywood to be "that the voter who receives them must be presumed to be in so low a state of indigence that he cannot have an independent will of his own, or exercise a sound discretion in giving his vote." The poverty of the voter is the matter to be ascertained, and the evidence of receipt of alms is the evidence to prove. Now what is, or at any rate in order to be a proper object of this charity, what ought to be, the condition of this voter? He must be a "poor decayed householder." Can words express more forcibly the state of destitution to which he must be reduced? Can a man be said to have an independent will of his own when he is wholly dependent upon the trustees of a charity for his subsistence? In accordance, therefore, with the established and undoubted law on the subject of pauperism, this voter must be struck off the poll.

Merewether, Serjt.

The only difference that has been made since the determination reported by Lord Glenbervie, has been in the mode of distribution of this charity. This has been

the sole effect of all the late Acts of Parliament that have been passed respecting it, for Parliament never varies the objects of a charity. Those objects were, in the time of the former determination of a Committee of this House, "poor decayed householders;" they remain so still; and unless the present Committee shall, contrary to the usual practice, decide in direct opposition to the former determination of a Committee as to a right of voting, they must still retain their franchise. No grounds, however, have been shown to induce the present Committee to take so unusual a step. The distinction as to pauperism has been repeatedly determined to be this, that where a man receives parochial relief, or relief from a charity in aid of the parochial funds, he is disqualified; where he receives assistance and benefit from individual benevolence, or from a charity, the funds of which are distributed by private hands, he is not disqualified. A contrary determination would be monstrous, for it would disqualify from voting every fellow of a college at our Universities, and every member of the establishments at Winchester and of the Charterhouse. The objects of this charity could not be contended to be in aid of the parish funds. Poor decayed householders were not persons to whom the parish officers ought to afford relief; the class of persons whom they were bound to relieve, was, by the 13th of Elizabeth, defined to be "the sick, old, impotent, and unable to work." The true intention of the founder of the charity was (as had been stated by one of the witnesses) not to aid the parish funds, but to prevent these poor householders from ever being reduced to have recourse to them, and never having had recourse to them, they retained their right of voting.

The Committee determined that the vote of John Cavit was a good vote.

10 March. Wilcox's case. A check clerk in the employ of one candidate cannot vote for the opposing candidate.

The voter had been employed and paid as a check clerk by Mr. Whitbread.

Mr. Russell now objected to him on the ground that he came within the words of the Act 7 & 8 G. 4, c. 37, by which it was declared, "that any person employed at an election as counsel, agent, attorney, poll-clerk, flagman, or in any other capacity, for the purposes of such election, and who should at any time, either before, during or after such election, accept or take from any such candidate or candidates, or from any person whatsoever, for or in consideration of or with reference to such employment, any sum or sums of money, retaining fee, office, place or employment, or any promise, &c. should be incapable of voting at such election."

Heath, Serjt.

The proper method of construing an Act of Parliament is from its object, and the object of this Act was to prevent the candidate's own clerks and agents, not those of other candidates, from polling for him. Besides there is no mention in this Act of check-clerks. The words are, "counsel, agent, attorney, poll-clerk, flagman, or in any other capacity," and it is a general rule of law, that where in a statute persons of an inferior class are named, and general words of description follow, that they shall not include persons of a superior degree, as where a statute spoke of "deans, prebendaries, parsons, vicars and others, having spiritual promotion," it was held not to include bishops (*x*). Here a check-clerk is certainly of a superior class to a flagman, which is the last class named, and cannot, therefore, be included in the general words, "employed in any other capacity," which must refer to persons of an inferior degree to that last mentioned.

The Committee determined that the vote of William Wilcox was a bad vote.

(*x*) 13th Eliz. c. 10.

8th March. Thomas Lawson's case. If the revising barrister decides upon a case, although the notice of objection was defective, a Committee will entertain it. See *Ripon case*, post.

The objection to the voter was the receipt of parochial relief prior to registration. It became necessary, therefore, to prove that it was discussed before the barrister. The overseer of the parish was called to do so, and he produced the notice of objection, in which the objector had omitted to insert the place of his abode. This defect did not appear to have been pointed out to the barrister, who decided that the name should remain on the list.

Heath, Serjt., and Mr. Ryland:

Insisted that the notice being defective, the barrister had no jurisdiction, and therefore he ought not to have heard the case. His having done so erroneously ought not to make any difference as against the voter, and the case ought to be considered as if it had never been discussed before, and consequently ought not be entered into.

Merewether, Serjt.

All that the Act requires to give the Committee the power of determining these questions is, that the name should be upon the list in consequence of a decision of the barrister. Here he has made a decision that the name should remain on the register, and we are therefore at liberty to proceed to show that decision to have been incorrect.

The Committee intimated their opinion that the parties might enter into the merits of the case.

What a voter says before the barrister in support of his vote cannot be given in evidence before a Committee.

The case then proceeded. In the course of it questions were asked, in order to show what the voter himself said before the barrister in defence of his vote.

Merewether, Serjt.

Objected that what the voter said in support of his vote could not be admitted in evidence, although what he said against it might.

Heath, Serjt.

Contended that what a voter said at the poll might

be received, and that in the *Petersfield case* (*y*) the question had been frequently asked, what consideration the Cricket-field voters said before the barrister they had given for their share in it.

Merewether, Serjt.

Replied that the questions had been asked in cross-examination in the *Petersfield case*, in order to procure proof of declarations by them before the barrister against the validity of their own votes.

The Committee determined that the questions should not be put.

The case was then gone into, and it being proved that the voter, who was a bricklayer, had been employed by the parish at pauper's wages, the Committee determined the vote to be bad.

Henry Taylor's case. Disqualification at the time of registration is not a valid objection.

The objection that was relied upon in this case was, that the voter, who was a freeman, was not residing at Bedford, or within seven miles thereof, at the time of signing the register.

Mr. Harrison and Heath, Serjt.

Contended, in support of the objection, that if a party becomes disqualified at any time after the 31st of July he cannot vote afterwards.

Merewether, Serjt.

Insisted that the only two periods that could be regarded were the 31st of July and the time of polling.

The Chairman stated that this case fell within the meaning of Flight's case.

Charles Eagles' case. From the circumstance of two notices of objection having been withdrawn, on a third having been declared invalid, no presumption of fraud arises so as to give a Committee jurisdiction to hear the case.

The voter in this case had been objected to by three persons. One of the notices of objection having been decided to be bad by the barrister, on the ground of the want of statement of the objector's place of abode, the other two objectors immediately withdrew their objections.

(*y*) *ante*, p. 31.

Mr. Harrison

Urged the Committee to hear this case, although it had not been discussed before the barrister, on the grounds that it was clear from the description on the register, viz. "of Barton, freeman," that every body must have known that the vote was bad; that the withdrawal of two of the objections after the only *bonâ fide* one had been declared informal, showed that they were put in collusively; that fraud vitiates all transactions, and therefore they ought to be treated as if they had not been withdrawn, and the case had been heard by the barrister.

Merewether, Serjt.

Insisted that this case was also precisely the same as Flight's; that the objections having been withdrawn, the case was not heard before the barrister, and the Committee therefore had no jurisdiction. As to fraud or collusion it was against all the principles of law to presume it.

The Committee determined that evidence could not be gone into in this case, and that the vote was good, and should remain on the poll.

8th March. Gibbon's case. A wrong description of himself at the poll by a voter does not affect his vote if he is on the register.

The town-clerk of Bedford had given instructions to the poll-clerks to ask each voter whether he voted in respect of an old qualification, or a new qualification under the Reform Act, and to enter them on the poll-book accordingly. The poll-clerk, who entered Gibbon's vote, entered the qualification as "householder" of all who said they voted in respect of the old qualification of inhabitant householders; as "house" of all who said they voted in respect of the new franchise of 10 *l.* householders. He was called as a witness, and stated that Gibbon, on being asked in what right he voted, answered, "inhabitant householder," and was entered accordingly "householder." Gibbon's name was not on the register in the list of inhabitant householders, but was in a list of 10 *l.* householders.

Mr. Follett:

This vote must be struck off. The voter's name is not registered as an inhabitant householder, and he cannot now be admitted to show that he had any other right to vote than that which he claimed at the poll. In the *Seaford case* (*z*) the vote of Serjt. Kemp, who voted as a freeman, was held to be bad, because the Committee determined that freemen had no right to vote for that borough, although he had an undoubted right to vote for it in the character of an inhabitant paying scot and lot. In the *Middlesex case* (*a*) the Committee determined to admit no evidence to correct the poll, showing a different description from that entered by the poll-clerk. An objection of this kind is stronger now than it was under the system previous to the Reform Act, because different lists are made out of the voters in respect of different rights, and the only means of knowing whether the person, who claims a right to vote, is entitled so to do, is by referring to the list in the register of the persons having that right.

Heath, Serjt.

The directions of a town-clerk to the poll-clerks cannot deprive a man, whose name is on the register, of his right to vote. The question was one which ought not to have been asked at all, for the Reform Act expressly directs that no other questions than the three set out in the 58th section ought to be asked of any voter at the time of his tendering his vote. If, however, asking a question which the poll-clerk by law had no right to do, is to vitiate a man's vote, the question ought to have been asked in a more precise form than it had been in the present case, for any voter in respect of the new qualification, if asked in what right he claimed to vote, would naturally answer, as a householder, and that answer would be perfectly true.

(*z*) Simeon, 136. (*a*) 2 Peck. 52.

The Committee decided that the vote was good, and ought to remain on the poll.

10th March. Thomas Chowne's case. Presumption in favour of a voter being the person who was registered.

The voter had polled as a freeman. He was described in the register as "Thomas Chowne of Higham Ferrers, Northamptonshire, miller." It was proved by the corporation books that there was only one freeman of the name of Thomas Chowne, and that he had been admitted on the 31st of January 1791, together with a person of the name of Francis Shee. Francis Shee was then called, who proved that he had been admitted on the same day with Thomas Chowne, who was a miller at Higham Ferrers, with whom he was well acquainted, and who had died 38 years ago. On cross-examination, he stated, that he knew another Thomas Chowne, also a miller of Higham Ferrers, the nephew of the former, and that this latter person had voted at the election in 1831, and that no objection was then taken to his vote.

Merewether, Serjt.:

This case was not discussed before the barrister, who merely altered the word North, as it appeared on the list, to Northamptonshire. An informal objection only had been made to it, and it comes precisely within the principle laid down in *Flight's case*.

Heath, Serjt.:

Our objection is not to the register, but to the poll. The Thomas Chowne on the register was the Thomas Chowne who was a freeman; the Thomas Chowne who voted was not the Thomas Chowne who was a freeman, and therefore not the individual who was on the register. If this vote is to be held good, any person may give his vote for any other person of a similar name.

Merewether, Serjt. in reply:

It is a fallacy to say that the Thomas Chowne in the register was not the person who had polled. If

the Thomas Chowne presented to the barrister in the freeman's list had been dead, the barrister was directed by the terms of the 50th section of the Reform Act to strike his name out of it; if the Thomas Chowne whose name was on the list had no right to have been inserted, he ought to have been objected to, and on proof of his not having that right, his name would also have been expunged. No proper objection was however made to the living man, no proof was given of the death of the dead man, the name stands on the register, and it must be presumed to be the name of the man who had actually voted in respect of the right for which he was registered.

The Committee determined the vote to be good.

12th March. Thomas Harper's case. An inhabitant householder paying scot and lot leaves his house, and goes into lodgings after he had been registered, but before he voted: Held that he had lost his right of voting.

The voter was not inserted in an original list of voters made out by the overseers. He put in a claim however to be inserted as an inhabitant householder, which was allowed by the barrister. After having been thus placed on the register, he left the house which he held at the time of his registration, and removed into lodgings a few days before the election.

Merewether, Serjt.

Objected to any evidence being entered into to show that the qualification of the voter had been altered since the time of his registration, on the ground that it was the intention of the Legislature that the register should be conclusive upon all questions, except where a right of appeal was given from the decisions of the barrister.

After a short discussion, in which it was observed by one of the members of the Committee that the voter could not have answered in the affirmative the third question, as to the continuance of his qualification, which the Reform Act directs the returning-officer, on a requisition by or on behalf of one of the candidates, to administer at the poll, or if he had done so, must have answered it falsely, the Committee overruled the objection. The case was then proceeded in, and after

hearing a great deal of conflicting evidence as to the circumstances under which the voter left his house, the Committee determined that the vote was bad.

Stock's case. An inhabitant householder who leaves his house after registration and goes into lodgings, loses his vote, although he continues to pay rent to the landlord for the house after he had quitted it.

The voter, who was registered as an inhabitant householder, left his house on the 21st of November, and went into lodgings. A widow woman succeeded him, and remained in the house until the 21st December without paying rent; she paid from that time 1 *s.* 9 *d.* a week to the landlord of whom Stock had held the house. It was not proved who paid the rent to the landlord between the 21st of November and 21st of December, but the widow said she supposed the voter did.

Heath, Serjt.

Contended that this was a bad vote, as Stock had ceased to be a householder previously to the election. The test of being a householder is having the exclusive right to the outer door (*b*); Stock had parted with this before the election, and had therefore ceased to be a householder at that period.

Merewether, Serjt.:

In support of the vote, urged that Stock, though he had gone out of the house, still held it of the landlord, and must therefore be considered as a householder.

The Committee determined that the vote was bad.

13th March. The Marquis of Tavistock's case. The warrant of the King, addressed to the Chancellor, directing him to issue a writ of summons to the

It was objected to the Marquis of Tavistock, that he was a peer of the realm at the time that he voted, which he did as a freeman on the 12th of December. The Gazette of the 11th of December was put in, which contained an announcement in these terms: "Whitehall, December the 11th, 1832. The King has been pleased to order a writ to be issued under the Great Seal of the United Kingdom of Great Britain and Ireland, for summoning Francis Russell, Esq. (commonly called the

(*b*) *Cirencester case*, 2 *Fraser*, 449.

House of Lords, does not create the person directed to be summoned a peer, so as to prevent him from voting.

Marquis of Tavistock) to the House of Peers, by the style and title of Baron Howland, of Streatham, in the county of Surrey." The King's warrant was then produced from the Crown-office; it was dated the 7th of December 1832, was addressed to the Chancellor, and directed him "to make out or cause to be made out forthwith a writ of summons under the Great Seal of the United Kingdom, &c. to be directed to our trusty and well-beloved cousin Francis Russell, Chevalier, commonly called the Marquis of Tavistock, by the name and title of Baron Howland, &c. to be personally present with us, and with the prelates, peers and barons of our realm, at our Parliament to be holden at Westminster on Tuesday the 29th day of January next, in as ample and honourable a manner and form to all intents and purposes as any baron of this realm hath at any time heretofore been inrolled or created by writ." The Marquis, on his return home to Woburn Abbey after voting, found a copy of the Gazette had arrived from London. He immediately wrote to the returning-officers in these terms: "Gentlemen, I think it right to state to you, as the returning-officers for the Town of Bedford, that since my giving my vote this day for Messrs. Whitbread and Crawley, I have received a copy of the Gazette, by which it appears that the King's writ calling me up to the House of Lords had been actually issued. Of this I was wholly unaware at the time of voting. It is therefore my wish that my name should be withdrawn altogether from the poll-book if it can be done consistently with the law and practice of elections, but I must submit this to your discretion. I remain, &c." The returning-officers, under the advice of counsel, made no alteration in the poll.

Mr. Ryland:

It is hardly necessary to refer to the numerous resolutions of the House, to prove that a peer has no right to vote in the election of members of Parliament.

CASE VI.

BOROUGH OF NEWRY.

The Committee was appointed on the 7th of March 1833, and consisted of the following Gentlemen:

The Right Hon. Sir John Byng, Bart. M. P. for Poole, (*Chairman*).

The Hon. Anthony Henry Ashley Cooper, M. P. for Dorchester.
George Granville Harcourt, Esq. M. P. for Oxfordshire.
Richard Bethell, Esq. M. P. for E. R. York.
John Parker, Esq. M. P. for Sheffield.
Sir Hyde Parker, Bart. M. P. for West Suffolk.
James Loch, Esq. M. P. for Kirkwall, &c.
Sir Hedworth Williamson, Bart. M. P. for North Durham County.
Robert Pigott, Esq. M. P. for Bridgenorth.
Lord Visct. Molyneux, M. P. for South Lancashire.
The Hon. Sidney Herbert, M. P. for South Wilts.

Petitioner:—Dennis Maguire, Esq.
Sitting Member:—Lord Arthur Marcus Cecil Hill.
Counsel for the Petitioner:—Mr. Harrison and Mr. O'Hanlon.
Agent:—Mr. George Ogle.
Counsel for the Sitting Member:—Mr. David Pollock, Mr. Follett and Mr. Talbot.
Agents:—Messrs. Handley & Durant, and Mr. R. W. Green, Newry.

Statements of the Petition.

THE petition stated, that the petitioner and the sitting member were the only candidates at the last election for the borough of Newry, which closed on the 27th of

December last, when the seneschal for that borough declared the majority of votes to be in favour of the sitting member, who was thereupon returned.

There were allegations of acts of bribery and treating on the part of the sitting member, "and of his agents, friends and managers," which the petition stated to be open and notorious in the borough.

It also stated, that the sitting member, in order to derive an advantage over the petitioner at the election, and for the purpose of procuring himself to be returned at the election, employed as his conducting agent Mr. John Craig, the then clerk of the peace for the county of Down, in which the greater part of the borough, and the place of election thereof, are situate, and who as such clerk of the peace has by law, and had at and during the election, the custody of the original affidavits of registry of the electors of the borough, and that at such election he acted as such conducting agent for the sitting member; and it submitted, that this employment of the clerk of the peace was unconstitutional and illegal (*a*); and it alleged that "by the several illegal ways and means aforesaid" the sitting member had obtained a colourable majority over the petitioner.

(*a*) The only charge against Mr. Craig was, that he had delayed delivering the certificates of registry until the day before the election. It appeared that Mr. Craig's residence was 24 Irish (more than 30 English) miles distant from Newry. The 28th section of the Irish Reform Act, 2 & 3 Will. 4, c. 88, contains no express provision as to the time or place of delivering certificates, though if demanded, and payment of one shilling be made, at the time of the registry, they may then be obtained; if, therefore, the certificates had not been sent in, the voters would have had to travel to Mr. Craig's house for them. There was no proof of persons having been delayed at the poll for want of their certificates; the Committee determined that the allegation did not let in evidence of inconvenience to voters, and "that if any inconvenience had existed upon the ground which had been suggested, the blame rather rested with the electors themselves, than with the clerk of the peace." 11th March, printed Minutes, p. 21.

The petition prayed the House to declare the election and return of the sitting member wholly illegal and void, and that the petitioner was duly elected.

Prayer that the petitioner might be declared duly elected.

The counsel for the petitioner having abandoned the scrutiny, the case turned wholly on the question of bribery.

It appeared from the evidence that a club, principally but not entirely composed of voters for the borough, had been formed in Newry more than six months previously to the election, called the Union Club, the meetings of which were held at Black's Tavern, in Hill-street, in that borough. These meetings ordinarily took place once a month, but at the period of the registration, and for a week or fortnight before and during the election, they were held nightly.

Of this club, Captain Seymour, Mr. John Ritchie, Mr. James Lisle, and Mr. John Boyd, were proved to be members.

An application had been made to Colonel Needham, on the part of the club, to become a candidate for the borough, and a canvass had commenced for that gentleman 10 days before the election.

The canvass for Colonel Needham was for some reason abandoned on the 15th December. Mr. John Boyd and Mr. James Lisle, as a deputation from the club, then waited on Lord Arthur Marcus Cecil Hill, at a place upwards of 40 miles distant from Newry, to request his Lordship would become a candidate for the representation of the borough. It appeared that the subject had been previously mentioned to his Lordship by an individual, but no arrangements had been made by him in consequence. Lord Marcus Hill accepted the invitation, and a discussion having taken place between his Lordship and the deputation about the expenses of the election, it was arranged that he should bear his own expenses.

On the following day, (Sunday), Lord Marcus Hill arrived in Newry, to which town he was, personally, a perfect stranger.

The polling commenced on Friday, the 21st of December. No committee appeared to have been appointed, but the business of the election was conducted by members of the club as such, partly in the tally-rooms and apartments adjoining, under the roof of the Market-house, and partly in different rooms at Black's Tavern. At the tally-rooms, Captain Seymour and Mr. James Lisle were proved to have been frequent attendants; Mr. Ritchie was only occasionally present there. The business of arranging the tallies and sending up voters to the poll was conducted at these rooms.

In his canvass of the borough, Lord Marcus Hill was proved to have been accompanied by several members of the club, among whom were Mr. James Lisle, Mr. Ritchie and Captain Seymour, and he was followed by many other persons, some witnesses speaking to 20, others to 30, others to a great crowd of persons.

Lord Hill attended mostly every evening at the club as a visitor. The number of members present varied from 30 to 50. Each member paid his own expenses at these meetings.

In support of the charge of bribery several witnesses were examined; the first of whom (Catherine Havern) stated a conversation between the sitting member and herself, importing a promise of money for her husband's vote, and added that she did not go on the day appointed for the payment, because she said it was always her wish that her husband should vote for Mr. Maguire, which he did on the following day (*b*); her

(*b*) See 1 Peck. 91, *Barnstaple case*, where it is said to have been decided, that an offer to bribe is, in a Parliamentary sense, no offence. In the *Wootton Basset case*, 1819, however, the chairman, Sir J. Stew-

object in making the application was to get what money she could. When called upon to identify Lord Marcus Hill, the witness pointed to a member of the Committee, Lord Viscount Molyneux. It is presumed that the Committee did not consider this witness worthy of credit (*c*).

The next witness was Thomas Macparlan, who stated, that he had voted for the sitting member, and had received during the election a visit from Mr. James Lisle.

That agency must first be proved.

Mr. Pollock objected to any further evidence of the acts of Mr. Lisle, his agency not having been proved.

Mr. Harrison:

It has been proved that Mr. Lisle went, as the representative of the club, to the sitting member, to solicit him to become a candidate. This club, though its meetings ordinarily took place only once a month, shortly before and during the election met every night. The members of it connect themselves with the election, and Lord Hill with them. The business of the election was carried on at the tally-room, where Mr. Lisle has been shown to have been frequently seen busily engaged. He has also introduced the sitting member to electors, and has canvassed with him. In the first *Dublin case* (*d*), acts were proved to have taken place

art, (who was a nominee on the Barnstaple Committee), said the decision in that case was misunderstood, for he had suggested to the Committee the propriety of first considering whether the party had made the offer, which they determined he had not done. See also *Taunton case*, Minutes, 7th March 1831; and on the subject of unsuccessful bribery, see *Bush* v. *Rawlins*, cited in 3 Burr. 1236; *Sulston* v. *Norton*, ib. 1237, judgment of Lord Mansfield; *Coombe* v. *Pitt*, ib. 1586. *Rex* v. *Vaughan*, 4 Burr. 2500; *Rex* v. *Plympton*, 2 Lord Raym. 1377; all cited by Mr. Harrison in his opening; and *Lilley* v. *Corne*, 1 Selwyn N. P. 650 n.; the notes 2 Hawk. P. C. 7th edition, c. 67, s. 10; 2 Dougl. 414, 415; and Dodd's Doubtful Questions on the Law of Elections, ch. 7, p. 81.

(*c*) The evidence of this witness may be seen at length in the printed Minutes, pp. 14, 15, 16, 17, 18, 20.

(*d*) Minutes, 30th July 1831.

in a room, to which the only access was through the committee-room; an objection taken by Mr. Serjeant Perrin's counsel, that the petitioners were not entitled to proceed to such proof, having been over-ruled on the ground that persons in the private room must be presumed to have been engaged in the business of the election. In that case Captain Hart ordered carriages to bring up voters. This was allowed by the Committee as a proof of agency.

The committee-room, in the *Liverpool case* (*e*), was the place where the business of the election was conducted. In the *Penryn case* (*f*), 1827, where the doctrine that agency should be first proved was fully recognized, evidence of Sowell's acts was admitted after he had been proved by the testimony of a witness to have introduced Mr. Manning, to have canvassed with him, and to have appeared to take an active part at the election. The fact of Sowell's agency was afterwards disproved, it having been shown that he had not introduced Mr. Manning, and the committee then rejected the evidence previously taken on the subject. In the *Penryn case* of 1820 (*g*), canvassing with the candidate, offering money to a voter in a private room, and appointing a man to follow the candidate at night to see that he was not watched or interrupted by the opposite party, were held sufficient evidence to establish the agency of Winn: so in the *New Windsor case* (*h*), canvassing before and at the election, in company with the candidate, and paying a publican's bill. Here the party goes to bring in the candidate, and is a member of a club meeting every night, the persons composing which

(*e*) See the printed Minutes of Evidence in that case.

(*f*) Minutes, 28th Feb. 1827.

(*g*) Corb. & Dan. 61. In this case Mr. Swann had told a voter to go to the quay, and he would send some one to him who would satisfy him; and afterwards added, "I will send Abraham Winn to the quay;" and Winn, who was then coming towards the quay, almost immediately afterwards came to the voter.

(*h*) 2 Peck. 194.

club canvass with the sitting member. At all events, a *primâ facie* case has been made out against Lisle. The question is not what may be the ultimate result of the evidence, but whether it shall be shut out altogether? In the *Chester case* (i), Fletcher was assumed to be an agent, because refreshment tickets were distributed with his signature.

Mr. Pollock in reply:

There was a public declaration made by Sowell in the first *Penryn case*, that he was an agent of the sitting member. The decisions in the *Dublin* and *Liverpool cases* were founded upon the circumstance of there being a committee.

Mr. Harrison here said it was not proved in the *Liverpool case* that the candidate had a committee.

Mr. Pollock:—Mr. Ewart was proved not to have been a party to what occurred there, but his relations were shown to have been active in the committee-room.

Here we have a club, not a committee of Lord Hill, Mr. Boyd, who has been examined, negatives the existence of a committee. Mr. Lisle solicited the sitting member to become a candidate. Now, the person soliciting a candidate to offer himself, is the last person to be an agent. An agent is a servant, and under the direction, and influence of the candidate. Here the sitting member had no influence over Mr. Lisle. With respect to canvassing, Mr. Boyd also canvassed with Lord Hill. Is he, therefore, to be deemed an agent? If each member of the club is to be construed an agent of the sitting member, and the gratuitous acts of each of these are to affect him, it will indeed be a hardship on him. It may be said that these persons may be called to disprove the fact of agency. How was the sitting member to know whose acts would be called in question? Newry, too, is somewhat distant. The first duty which Lord Hill's counsel have to perform is to

(i) Corb. & Dan. 68.

prevent the admission of improper evidence. The 2d *Penryn case* has been cited: on reference to the minutes of that case, it will be found that it has no feature in common with the present.

With respect to all decisions on election cases, it is difficult to arrive at the grounds which influence the committee in their decision, because no reason is given for it in the resolution communicated to the parties.

The Committee resolved, that the question as to Lisle's acts could not be put (*j*).

The only other evidence added on the subject of Lisle's agency, was that of Mr. George Ogle, the agent for the petitioner, who stated that on the second day of the election, he had remarked to Lord Hill "that he had too many active friends, particularly Mr. James Lisle, who was a host in himself;" to which the reply was, "Yes, indeed! and so very respectable a man (*k*);" and that of two other witnesses, who spoke to the fact of Lisle having been seen canvassing with the sitting member.

The Committee then allowed questions to be put as to Lisle's acts.

The following transaction was then proved by Macparlan and his wife: That Mr. Lisle had agreed at Macparlan's house to give him 40*l.* for his vote for the sitting member; that Lisle directed Macparlan "to go up on Maguire's tally, and then the bribery oath would not be put to him." This statement was corroborated by the evidence of Mr. John Reid, a merchant in Newry, who had stationed himself in a room at Macparlan's house, in order that he might, through a hole in the wainscot, witness the transaction; and in whose presence a parcel given subsequently to Macparlan's

(*j*) Printed Minutes, p. 18. A similar decision was given as to another person, p. 23, where the Committee also refused to admit the evidence *de bene esse*, on the application of the petitioner's counsel Mr. O' Hanlon.

(*k*) Printed Minutes, p. 21.

wife, by a woman who came to the house, was opened; the parcel contained 25 sovereigns (*l*).

The Committee afterwards permitted questions to be put as to an alleged act of bribery by Mr. J. Ritchie with Lisle's sanction, but directed the counsel for the petitioner to confine their examination to this one act, as they did not admit Mr. R. to be a sub-agent (*m*).

The petitioner's counsel (Mr. O'Hanlon) was permitted, under the circumstances, to examine as to one act of Captain Seymour (*n*), who had been proved to have canvassed with the sitting member; but was not allowed to put questions as to the acts of Mr. H. I. (*o*).

Mr. O'Hanlon having summed up the evidence;

Mr. Pollock insisted that the bribery, if it existed, was not proved to have taken place under such circumstances as showed the sitting member to be conusant of it. Of the eight cases brought forward, there were only two where the parties voted for Lord Hill. The other cases were said to be attempts to corrupt the known determined supporters of the petitioner: of these, the only instance in which an attempt had been made to connect the sitting member with these practices, was the case of Havern; but after the avowal by her of the motives which actuated her, he apprehended he might treat her evidence as totally devoid of credit. It was observable that no evidence had been adduced of money disbursed by the sitting member; no banker's account produced; no authority even given to pay money. With respect to the alleged acts of individual members of the club, whether believed or not, he trusted the Committee would not consider the sitting member answerable for them, because over the club he had no control; and then, upon every principle on which former

(*l*) Printed Minutes, pp 26, 27, to 34.

(*m*) The witness stated that R. himself undertook to give the sum promised him by Lisle, printed Minutes, p. 41.

(*n*) Printed Minutes, p. 48.

(*o*) Ibid. p. 49.

Committees had acted (except in the case of *Liverpool*), Lord Hill would be entitled to retain his seat.

Mar. 13th. The Committee came to the following Resolutions:

That the Hon. Arthur Marcus Cecil Hill, commonly called Lord Arthur Marcus Cecil Hill, is duly elected a burgess to serve in this present Parliament for the borough of Newry. That neither the petition of the said Dennis Maguire, nor the opposition to it, did appear to the said Committee to be frivolous or vexatious.

The following Resolution was also communicated to the House by the Chairman, Sir John Byng:

Resolved, That although it has not been proved that the sitting member was implicated by the existence of unlawful practices during the late election for the borough of Newry, it appears that a system of bribery prevailed there to a considerable extent, in which certain members of a club called "the Union" were concerned; and the Committee wish to direct the attention of the House to the part taken in these transactions by James Lisle and others.

The minutes of evidence taken before the Committee were laid before the House on the following day, and ordered to be printed.

Note.—The following cases have occurred on the subject of agency:

In the *Bristol case*, 1 Dougl. 280, it was alleged that the circumstances which would establish both agency and the acts of bribery, were so complicated that they could not be separated. The Committee allowed proof of payment to be given.

The Committee in the first *Ilchester case*, 3 Dougl. 160, admitted evidence of acts before proof of agency. So in the second *Ilchester case*, 1 Luders, 471.

So in the *Mitchell case*, 1 Luders, 89, evidence of the acts of one Curgenven was received. A similar decision was come to in the *Ilchester case*, 1 Lud. 469, and in the *Honiton case*, 3 Lud. 159; in which last, however, the circumstance of the bellman having gone round the town directing the voters to James Maynard's house, "where they would receive Sir George Yonge's benefaction," may very possibly have influenced the decision of the Committee.

In the *Dunfermline case*, 1 Peck. 15, the Committee stated their resolution to be "that the bribery might be proved before the agency."

All the above were cases of bribery.

In the *Bridgewater case*, 1 Peck. 102, the Committee resolved "that the counsel for the petitioners should be at liberty to enter into proof of such acts of supposed agents, as are to be followed by evidence that such acts were authorized or consented to by the sitting members."

The Committee in the *Ilchester case*, 1 Peck. 303, allowed a question to be put to a witness as to what passed at a meeting of several persons, alleged to have been held for the purpose of concerting a plan to corrupt the borough, though no previous evidence had been given to connect the parties with the sitting members: "the question might be asked either to prove agency or bribery."

In the *Hindon case*, 1 Dougl. 174, and the *Shaftesbury case*, 2 Dougl. 310, proof of agency was first required: but as to the latter case, it is said in 3 Dougl. 161, "that the resolution having been found inconvenient, it was agreed on all hands not to abide by it; that, accordingly, in the course of the trial it was not adhered to after the first day." Mr. Sykes' declaration, mentioned in 1 Lud. 86, "*that he would spend his manor in order to get the borough*," seems a better reason for the altered course of proceeding.

The Committee in the *Worcester case*, 1 Dougl. 263, resolved, "that when evidence is proposed to be produced of the criminal acts or conversation of any person alleged to be an agent of any of the parties, agency shall be previously proved." See note (A), 1 Dougl. 282.

The decision in the *Norwich case*, 3 Luders, 451, is in accordance with the above.

In the *Coventry case*, 1 Peck. 97, proof of agency was required by the Committee, before they would allow declarations of the supposed agent to be given in evidence. So, as to evidence of the conduct of an alleged agent, see *Herefordshire case*, 1 Peck. 209.

Evidence of what was said by Mr. Pytt, in the absence of the sitting member, respecting the opening of the house of one Matthews, was not permitted in the *Cirencester case*, 1 Peck. 467, Mr. Pytt having only been proved to have been a member of Mr. Beach's committee.

The Committee in the *Durham case* intimated to the counsel for the petitioners, after the opening of their case, that they expected agency to be first proved; 1 Peck. 185. See the observations there on general and particular agency. See also *Okehampton case*, 1 Peck. 375. *Middlesex case*, 2 Peck. 33, where similar decisions were given.

The cases which follow have been taken from the Minutes of Committees from 1819 to 1831, and are nearly uniform decisions with that of *Hindon*.

In the *Inverkeithing case*, Minutes 1819, evidence of declarations about the election was successfully objected to, agency not having been proved.

The following resolutions were passed in the *St. Ives case*, Minutes 10th June 1820:

"That agency is not sufficiently proved to justify the admission in the

minutes, of conversations between Mr. Halse and any other individuals, in the absence of the sitting members."

12th June: "That the Committee will receive in evidence any conversations of Mr. Halse (although held in the absence of the sitting members) accompanying any act done by Mr. Halse.

"That the Committee will not receive in evidence conversations held by Mr. Halse subsequently to the act done, and out of the hearing of the sitting members, excepting only declarations made to voters tending to influence their votes by corrupt expectations."

In the *Grantham case*, Minutes 6th July 1820, a witness having stated that a Mr. Nixon had communications with him at Grantham, in the capacity of an agent of Colonel Hughes, he was asked did he represent himself to be in that capacity at that time? The question being objected to, the Committee determined "that it might be put, with a view to establishing the agency in this instance, by connecting it with acts of the alleged agent, to be afterwards proved."

In the *Tregony case*, Minutes 15th February 1821, a witness having stated that Colonel O'Callaghan, Mr. Bennett and Mr. Cooke, canvassed him, the question "for whom did they canvass you to vote?" was objected to, because Mr. Bennett was not proved to be an agent of Lord Barnard, the sitting member. This objection was over-ruled, Bennett having been proved to have been actively engaged for both Colonel O'Callaghan and Lord Barnard at a former election.

In the *Pontefract case*, Minutes 10th March 1827; where the Committee also determined that they would not admit evidence to establish agency, if it tended to prove bribery or treating; in the *Berwick case*, Minutes 15th March 1827; and the *Dublin County case*, Minutes 27th March 1827, previous proof of agency was required.

In the *East Retford case*, Minutes 5th April 1827, the Committee determined "that it is the opinion of this Committee that counsel should in the first instance confine themselves to such an examination as may tend to prove the agency of Mr. Foljambe, or of others, as connected with the sitting members; and should abstain from putting questions to the witness (Mr. Foljambe), the answers to which might criminate him."

In the *Glasgow case*, Minutes 22d July 1831, the Committee permitted evidence to be given of conversations between the witness (John M'Leish), and Mr. Anthony Dickson, the uncle of the sitting member; Mr. Serjeant Spankie having stated that he should distinctly prove the agency of Mr. A. Dickson. This decision appears to have been given in consequence of the facts previously in evidence with reference to the particular transaction.

In the *Wells case*, which followed that of *Penryn*, Minutes 6th April 1827, the Committee required agency to be proved before the admissions or declarations of the alleged agents could be given in evidence; but the acts of supposed agents, in relation to treating and presumed bribery, were allowed to be proved, upon the understanding that such acts should afterwards be

brought home by recognition to the principal. Eventually, though heavy expenses were shown to have been incurred, the Committee did not vacate the seat.

In the *Liverpool case*, 1831 (printed Minutes), questions as to what had been promised or said by persons not proved to be agents, were waived by counsel, pp. 20, 22, 24, 78. A witness, George Shaw, having stated complaints to have been made by voters that they had got less than they were promised, the Committee determined that the question, "where were they promised it?" should not be put.

In the *Taunton case*, Minutes 28th Feb. 1831, the Committee determined that, Denman not having been proved to be an agent of Mr. Bainbridge, evidence of what passed between him and the witness under examination was inadmissible. In the same case, Minutes 2d March, a question was not allowed to be put as to the declaration *after* the election, of one who was an agent *at* the election, though only as to the expenses of it, the party making the declaration having been the cashier.

In the *Mayo case*, Minutes 14th March 1831, Mr. Harrison having stated, that the proof of agency was so mixed up with the facts that it was impossible to separate them, but that he should first prove that Mr. Touhy, the agent, was constantly going round canvassing, and in some instances in company with the sitting members; Mr. Adam objected, that as, in his opening, Mr. Harrison had not stated that he should bring home subsequent recognition to the sitting member himself, he must prove agency first.

The Committee suggested, that as Mr. Harrison had stated that he should prove agency to a certain extent in the first instance, it would be better for him to give that evidence, and then the counsel for the sitting member might take such objection as might appear to them expedient. This course was accordingly pursued.

In the first *Dublin case* of 1831, evidence was admitted of the acts and declarations of Baron Tuyll and Captain Hart, on the ground of their official character, the one being private secretary, the other comptroller of the household, to the Lord Lieutenant.

In the second *Dublin case*, Minutes 24th Sept. 1831, the Committee, in two resolutions, determined that evidence and examinations to prove bribery or treating were inadmissible before agency was established.

The *Oxford case*, ante, p. 61, note (*a*); and the *Norwich* and *Bristol cases*, post. are decisions to the same effect.

CASE VII.

BOROUGH OF MONTGOMERY.

The Committee was appointed on the 20th of March 1833, and consisted of the following gentlemen:

Sir Richard Godin Simeon, Bart, M. P. for the Isle of Wight, *(Chairman.)*

Lord Henniker, M. P. for East Suffolk.
Charles Smith Forster, Esq. M. P. for Walsall.
Richard Sullivan, Esq. M. P. for Kilkenny City.
Sir Francis Blake, Bart. M. P. for Berwick.
Garrett Standish Barry, Esq. M. P. for Cork County.
Hon. Charles Fleming, M. P. for Stirlingshire.
Wm. Francis Finn, Esq. M. P. for Kilkenny County.
Maurice O'Connell, Esq. M. P. for Tralee.
Patrick Lalor, Esq. M. P. for Queen's County.
Fergus O'Connor, M. P. for Cork County.

Petitioners:—Electors.
Sitting Member:—David Pugh, Esq.
Counsel for the Petitioners:—Mr. Serjeant Merewether and Mr. Serjeant Heath.
Agents:—Messrs. Sherwood and Thorp, and Messrs. Sweet and Carr.
Counsel for the Sitting Member:—Mr. Harrison, Mr. Follett, and Mr. Bullock.
Agent:—Mr. Hooper.

Petitioners, who had omitted to to state in their petition that they had a

THE description of the petitioners in this case was Edward Jones, of Rock Cottage, in the parish of Llanllwchaiarn, in the county of Montgomery, gent., and Thomas Owen of Vaynor, in the parish of Newtown in the same county, farmer, both respectively electors, and

claiming to have a right to vote in the election of a member for the borough of Montgomery.

right to vote at the election to which it related, permitted to proceed with it by a Committee.

Mr. Follett, for the sitting Member,

Contended that this petition could not be heard. The statute 9 Geo. 4, c. 22 (*a*), directed that no election petition should be proceeded upon "unless the same, at the time it was presented to the House, should be subscribed by some person or persons claiming therein to have had a right to vote at the election to which the same should relate, or to have had a right to be returned as duly elected thereat, or alleging himself or themselves to have been a candidate or candidates at such election, or claiming to have had a right to vote at the election of any delegate or commissioner to choose a burgess for any district of burghs in Scotland." The petitioners in this case did not state that they had had a right to vote at the election to which their petition related, but merely that they were electors, and claimed a right to vote in the election of members for the boroughs, which they might very well be when they signed the petition, without having been so at the time of the election in question. The Committee therefore had no power to hear the petition; for the words of the Act were imperative, "that no petition should be proceeded upon unless it was subscribed by some persons claiming or alleging as therein was mentioned," which this petition was not. Objections similar to the present had frequently been made under the words of the former statute regulating election petitions, the 28 Geo. 3, c. 52, and which were identical, as far as related to English election petitions, with those of the 9 Geo. 4. In the *Carmarthenshire case* (*b*) the petitioner only stated himself to be "a freeholder of the county of Carmarthen." In the

(*a*) sect. 4.

(*b*) 1 Peck. 287; the date of the appointment of the Committee was 10th March 1803.

Boston case (*c*) the petitioners described themselves as "persons having a right to vote at the election of burgesses to serve in Parliament for the borough of Boston." In both these cases the Committees over-ruled the objections; they did so, however, on the erroneous ground that the petition having been received by the House, and referred to them to try the merits, they had no jurisdiction to decide whether it ought to be proceeded upon or not, the House having, in effect, decided that it should be proceeded upon by referring it to them. On the 2d of February 1804, after the resolutions of these Committees, a motion was made in the House of Commons by Mr. Fox, that the order for taking into consideration a petition which had been presented by certain persons who only styled themselves "freeholders of the county of Middlesex," against the return of Sir Francis Burdett for that county, should be discharged; a debate of considerable length ensued (*d*), and the motion was ultimately negatived by a majority of 72. The true ground of the rejection of this motion was not, however, that the House thought that the petitioners had sufficiently described themselves, but because, as was argued by the Attorney-general, Mr. Perceval, it was an objection that ought to be taken before a Committee, to whom, by the Grenville Act, all questions relative to election petitions are to be referred. These three cases could not be therefore treated as authorities against this objection, the two first having been decided by Committees, under a misapprehension of the extent of their jurisdiction, as indeed appeared from the speech of one of the members of that for Carmarthenshire (*e*), in the debate on the *Middlesex case*, and

(*c*) 1 Peck. 434; the date of the appointment of this Committee was 28th April 1803.

(*d*) For an account of this debate see 1 Peck. 294, *et seq.* Hansard's Parliamentary Debates, vol. i. pp. 993, 996.

(*e*) Speech of Mr. Deverell, 1 Peck. 299.

the motion in the latter having been properly dismissed by the House, because they had not the power to entertain the question. The true answer, indeed, to any inference that may be drawn from the rejection of Mr. Fox's motion is given by Mr. Rogers (*f*), that the 28 Geo. 3, c. 52, only directed that a petition, unless signed by persons claiming to have had a right to vote at the election referred, should "not be proceeded upon in the manner prescribed in the said above recited Acts," which were the 10 Geo. 3, c. 16; 11 Geo. 3, c. 42; 14 Geo. 3, and 25 Geo. 3, c. 84; and the manner of proceeding prescribed in these Acts is that in which the petition was to be tried by a Committee, and had no reference whatever to any proceedings of the House. "A select Committee (Mr. Rogers continues) is the legitimate tribunal before which objections both to the form and substance of a petition ought to be taken, and any attempt to restore the old practice of discussing the controverted elections and returns in the House of Commons is an infringement of the Grenville Act, and a violation of the present constitution of Parliament;" and then adds, "the words of the Act are so plain, that it is difficult to account for a Committee having over-ruled the objection when taken before them (*g*)." The consequences would indeed be most dangerous if Committees were to take upon themselves to depart from the plain words of an Act of Parliament, however strong precedents might be urged before them in support of such a practice. Fortunately, however, any authority that might have been attached to the decisions of the Carmarthenshire and Boston Committees was very much weakened by the resolutions of the Committee in the *Nottingham case* (*h*). There the petitioners, nearly in the same way as the petitioners in the present case, described themselves as

(*f*) Rogers on Committees, p. 21.
(*g*) Ibid. p. 22.
(*h*) Corb. and Dan. 197.

"R. R. of Cheapside, in the city of London, hosier, and J. C. of Fore-street, in the said city of London, gent., who were electors, and persons having a right to vote, and who did vote at the last election of members to serve for the said town and county in this present Parliament:" an objection was taken that the petitioners had not stated that they had any right to vote for the town of Nottingham at the last election; and the Committee allowed this objection, although it was not taken till the 5th day of their sitting, and determined that the petition was not conformable to the provisions of the 28th Geo. 3, and that the petitioners should not be allowed to proceed. With this precedent before them, he trusted that no previous decisions passed under misapprehension would induce the Committee to deviate from the plain directions of the Act under which they derived their authority, and to permit the petitioners to proceed in contravention of its provisions.

Merewether, Serjt.:

Technical objections of this kind have always been discouraged, and in no instance has one similar to the present been allowed. The petitioners in the *Boston*, *Carmarthenshire* and *Middlesex cases* had all failed to describe themselves as claiming to have had a right to vote at the election to which their petitions related. The objections to all of them were therefore precisely the same as the present, and in all of them had met with the same fate of being over-ruled, in the two former cases by Committees, in the latter by the House of Commons, although pressed upon them by all the talent and ingenuity of Mr. Fox. It was impossible to state with certainty upon what grounds the latter determination proceeded, it might equally as well be assumed to have been on the ground of the invalidity of the objection, as of its being a question for a Committee and not for the House, for both points were argued in the course of the debate. There were however stronger reasons

for supposing that it was formed upon the former than upon the latter ground. A series of precedents was cited to show that the ordinary method of description of election petitioners was only as freeholders, electors, legal electors and freemen, referring not to the time of election, but of complaint made (*i*), and with the recent decisions of the Boston and Carmarthenshire petitions before them, the House could hardly have admitted so strictly a technical objection to prevail. The latter too would have been an incorrect reason for their determination, for the question was properly under the 28th Geo. 3., as well as under the present statute, a question for the House, and not for a Committee, to whom it was referred to try the merits, and not to determine whether the petition ought to be proceeded upon. The decision in the *Nottingham case*, the only one quoted on the other side which even bore the appearance of being in their favour, in reality turned upon a different point, for there the petitioners described themselves as "having a right to vote, and who did vote at the last election of members to serve for the *said* town and county in this present Parliament;" but there was nothing to which the word *said* could be held to refer except the "City of London," where they had previously stated their residence to be, and therefore there was no statement at all in the petition that the petitioners claimed a right to vote for the town and county of the town of Nottingham. Admitting therefore the decision of that Committee, in refusing to determine upon the merits of a petition the trial of which was referred to them, to have been right, it was not upon the question now in dispute.

As then this objection, if made under the old system of election law, would not have been valid, can it be

(*i*) See speech of Mr. Addington, the Chancellor of the Exchequer, 1 Peck. 293. In the *Carrickfergus case*, Minutes 1831, the description "undersigned freemen" was held insufficient.

held to be so under the present system. This Committee is now sitting under the provisions of the 9th Geo. 4, c. 22. The 40th section of that Act points out the duties of such Committees to be, to try the merits of the return or election, or both, and to determine by a majority of voices whether the petitioners or sitting member, or either of them, be duly returned or elected, or whether the election be void, or whether a new writ ought to issue, and they are also to report whether the petition or the opposition to it is frivolous or vexatious, and in certain cases whether an election or return or omission of a return is vexatious and corrupt. These are the whole of the subjects referred to the Committee, and they have no power whatever to determine whether a petition shall or shall not be proceeded upon: that is a question for the House, which has in effect decided it by referring the petition to a Committee. The arguments used by Mr. Rogers have no application under the present statute, for the words relied upon by him in the 28th Geo. 3, that "no such petition shall be proceeded upon in the manner prescribed in the said above recited Acts," do not occur in the 9th Geo. 4. The words there are simply "shall not be proceeded upon." Any objection, therefore, to a petition ought to be taken before it has been proceeded upon by the appointment of a day for the taking it into consideration, by the recognizances having been entered into, by the lists of objected votes having been mutually interchanged, by the ballot having been struck, by the reference having been made to a Committee, and that Committee having actually assembled and been sworn to try its merits. Even were it conceded that the Committee had the jurisdiction to determine upon this objection, in the present case it would be one of mere verbal criticism, and unsupported by any argument drawn from practical utility, for the only points that were urged in the former discussions on the subject were that the petitioners might

be persons having a right to vote at the time of signing the petition, but might not have been so at the time of the election in question; but now, since the passing of the Reform Act, no person could vote unless his name was in the register, and there having been no revision of the register since the last election, every person who had a right to vote at the time of signing the petition must have had one to vote at the election.

Mr. Follett in reply:

The plain words of the 9th Geo. 4 are, that no petition shall be proceeded upon unless it is subscribed as therein is mentioned; this petition is not so signed. Can then the Committee proceed upon it unless in opposition to the law. Their power to decide upon objections of this description is unquestionable, and is recognized, among others, in the *Taunton case* (*k*). In the *Herefordshire case* (*l*), the Committee determined that the petitioners should not be allowed to proceed, on the ground of their having voted for the sitting member, after they knew of his having committed the acts of treating and bribery with which he was charged in the petition. The Reform Act made no difference whatever as to the effect of the description of the petitioners, for persons now may have a right to vote at an election, and yet have been excluded from the register by the decision of the revising barrister, and may present a petition for the very purpose of having the votes which they tendered at the election put on the poll by the resolution of a Committee.

(*k*) Minutes, 23d Feb. 1831. In this case, the objection, that General Peachey had no interest in the petition, because the sitting member was prepared to prove bribery against him, was over-ruled. In the *Penryn case*, Minutes 28th Feb. 1827, the candidate who petitioned had refused to take the qualification oath. The Committee determined that his petition could not be proceeded upon. The *Sandwich case*, Minutes 26th May 1808, and the *Great Grimsby case*, Minutes 19th Feb. 1813, decided that an unqualified candidate could not be heard.

(*l*) 1 Peck. 210.

The Committee over-ruled the objection.

The petition was then proceeded on. It stated the election, at which the sitting member and Colonel Edwards were the candidates. It then proceeded at considerable length with charges against the sitting member. The principal charges relied on were, that Mr. Pugh, by himself, his agents, and other persons on his behalf, acted and assisted in carrying off and detaining from voting many voters who had promised to vote for Colonel Edwards, and would have voted for him if not so prevented; that the Lord Lieutenants of the counties of Salop and Montgomery, one being a peer of the realm, had exercised undue influence in Mr. Pugh's behalf; that some of the voters who had intended to vote for Colonel Edwards were taken to seats of the Lord Lieutenants, and there kept and entertained with meat and drink, with a view to prevent their voting for Colonel Edwards, and with a view to induce them to vote for Mr. Pugh. That Mr. Pugh, by himself, his agents, and others on his behalf, fraudulently carried away one of the voters who had promised to vote for Colonel Edwards, and had detained and entertained him at his own house during the election, and that, it having been discovered that he was concealed there, an express was sent for him, but that he was nevertheless kept out of the way until after the election was passed. That Mr. Pugh received and entertained at his own residence many of the voters, in order to induce them to vote for him, and to prevent their voting against him, after the teste of the writ; it also contained charges of bribery and treating. The prayer of it was, that the election might be declared void.

At the close of the poll the numbers were, for Mr. Pugh 335, for Colonel Edwards 321.

In support of the charges of abduction of voters, the petitioners proved the case of an auctioneer, living at Newtown, one of the contributory boroughs to Mont-

gomery, who had promised his vote to Colonel Edwards, but who was persuaded by the attorney of Mr. Pugh to come over to Montgomery on the Saturday before the election, and to stay there, in a private apartment at an inn in his interest, until the evening of Sunday, when he was taken in a post-chaise to Walcot, the seat of Lord Powis, the Lord Lieutenant of the county, where he remained till the next Tuesday, when he was sent over to Shrewsbury in a cart of Lord Powis's. At Shrewsbury he changed his mind, and returned to Newtown in time to vote on Wednesday, the second day of the polling, for Colonel Edwards. No constraint whatever was exercised upon him during all this time, and Lord Powis was not himself at Walcot. Other voters, some of whom had promised their votes to Colonel Edwards and some to Mr. Pugh, were proved to have been taken, by partisans of Mr. Pugh, one of them by his butler, to seats of Lord Clive and Lord Powis, and entertained there for one or two days previous to the day of polling, when they went up and voted for Mr. Pugh. One voter, who had promised his vote to Colonel Edwards, was acknowledged by Mr. Pugh, at Montgomery, on the second day of polling, to have slept at his house, which is near Montgomery, on the preceding night, and to have been there when he himself left it in the morning. He then, upon the remonstrances of some of Colonel Edwards's party, sent a letter by two of his opponent's friends to Mrs. Pugh, desiring that the voter might be sent immediately to Newtown. Mrs. Pugh received the letter at Montgomery; she asked for time to consult her husband's committee; in about half an hour's time they were informed they would find her at Mr. Pugh's house, about half a mile from the town, where they were obliged to walk, and on their arrival Mrs. Pugh told them that the voter had been gone upwards of an hour He never came to Newtown to vote. In support of the

charges of treating it was proved, that after the teste of the writ on the evening previous to the day of nomination, a party of seven persons, five of whom were voters, came to Mr. Pugh's house; that they received refreshment in his servant's hall; that he saw some of them in the housekeeper's room, and asked one of them for his vote, which the others had already promised; that the whole party got very drunk, that one was carried away home by his wife, and the others slept at Mr. Pugh's, and were sent away the next morning early in his break to a place a short distance from Montgomery, where they were privately set down. It was also proved that many public-houses were kept open in Mr. Pugh's interest both before and after the teste of the writ, and that one bill had been paid by the clerk to Mr. Pugh's land agent, after it had been examined by his attorney, and another by the clerk to his attorney at Llanidloes. The principal alleged acts of bribery were, that a lady, whose brother-in-law was a warm supporter of Mr. Pugh's, had marked 50 *l.* on her glove, in order to induce a voter to poll for him, and that his butler had offered 11 *l.* to the daughter of the same voter.

Merewether and Heath, Serjts.

Relied upon the facts proved, and cited the first *Southwark* (*l*) and *Middlesex* (*m*) *cases*, and *Felton* v. *Easthope* (*n*).

Mr. Harrison

Cited the *Coventry case* (*o*) to prove that irregularities, however great they may be, will not avoid the return if it is proved that the election was not materially affected by it. In that case, although there were riots during the whole of the polling, to such an extent that the clothes of the voters were actually torn from their backs

(*l*) Clifford, p. 8.
(*m*) 2 Peck. 31.
(*n*) Rogers on Elections, 220.
(*o*) Printed Minutes, March 1827. Parliamentary papers for 1826-27, vol. 4. A similar decision has been given in the *Coventry case* of this session.

and thrown upon the hustings, yet as it was shown by the number of votes remaining unpolled that the election was not affected by it, the return was decided to be good. Here 33 voters remained unpolled, who might have determined the election if they had thought proper. In regard to the charge of treating, he cited the cases of *Hughes* v. *Marshall* (*p*) and the *Chester* (*q*) and *Wells cases* (*r*), and contended that some of the facts proved were not shown to have been done by any authorized agent of the sitting member, and that many of them might well be attributed to the general system of hospitality prevalent in Wales, especially at the near approach of Christmas.

The Committee determined that David Pugh, Esq. was not duly elected; that the election was void; and that neither the petition nor the opposition to it was frivolous or vexatious.

(*p*) 2 Crom. & Jar. 118.
(*q*) Corb. & Dan. 68.
(*r*) Minutes, 6th April 1827.

CASE VIII.

LONGFORD COUNTY.

The Committee was appointed on the 19th of March 1833, and consisted of the following Gentlemen:

Thomas Wood, Esq. M. P. for Breconshire, (*Chairman.*)

Charles James Barnett, Esq. M. P. for Maidstone.
Sir John Rae Reid, Bart. M.P. for Dovor.
The Hon. E. R. Petre, M. P. for York City.
R. Westley Hall Dare, Esq. M. P. for South Essex.
The Hon. Robert H. Clive, M. P. for South Salop.
The Hon. Sir R. L. Dundas, M. P. for Richmond.
Lord Ernest Bruce, M. P. for Marlborough.
Robert Pringle, Esq. M. P. for Selkirkshire.
Wm. Turner, Esq. M. P. for Blackburn.
John Heathcote, Esq. M. P. for Tiverton.

Petitioners:—1. Electors.
2. Lord Visct. Forbes, and Anthony Lefroy, Esq.

Sitting Members:—Luke White, and James Halpin Rorke, Esqrs.

Counsel for the Petitioners:—Mr. Harrison, Mr. Joy, and Mr. Follett.

Agent:—Mr. Baker.

Counsel for Mr. Luke White:—Mr. Serjeant Merewether, and Mr. Charles Saunders.

Agents:—Messrs. Farrers & Co.

Counsel for Mr. Rorke:—Mr. D. Pollock.

Agent:—Mr. Mundell.

The petitions stated the names of the candidates.

THE petitions stated, that at the last election for the County of Longford, the petitioners, Lord Forbes and Mr. Anthony Lefroy, and the sitting members, were

candidates; the appointment of John Francis Fosberry, as deputy assistant-barrister; the subsequent appointment of John Doherty, Esq., which the petitioners alleged to have been wholly void, inoperative, and contrary to law (*a*), and, in consequence, that the registry held by him thereunder was *coram non judice*, and that the persons so by him entered on the registry thereby acquired no right of voting.

The appointments of Mr. Fosberry and Mr. Doherty as deputy assistant-barristers, which last was alleged to be illegal.

The petitions further stated, that Mr. Fosberry and Mr. Doherty sat in separate courts, and separately determined upon the validity of claims to be registered: that the list of claimants to be registered was, in obedience to the 2d & 3d Wil. 4, c. 88, called over three times, the third calling terminating on Monday the 19th of November: that after the termination of such third calling, Mr. Fosberry and Mr. Doherty attended in their respective courts for three days, to hear the claims of such persons as had engaged to appear during the calling of the list: that on the 22d of November, three proclamations having first been made, desiring all such persons as desired to be registered, and had not been registered, to come forward, and they would then be registered, the special session for the registration of voters was by public proclamation duly closed; that upon the close thereof Mr. Doherty, in a speech from the bench, formally took his leave of the county: that he notwithstanding, in his own private lodgings, attended only by the clerk of the peace for the county, adjudicated and determined upon the cases of 50 persons, whose claims to be registered he had in open court declined to admit or had rejected; that of the 50 cases so privately adjudicated by him, he directed 31 persons to be registered, and ordered the clerk of the peace to sign

That Mr. Fosberry and Mr. Doherty sat in separate courts.

That the special session was finally closed on the 22d of November.

That on the following day Mr. Doherty at his lodgings adjudicated 50 cases, of which he admitted the right of 31 to be registered.

(*a*) This ground was not proceeded upon. Mr. Fosberry commenced his sittings on the 10th of Oct.; these having continued through a part of November, Mr. Doherty was appointed to assist him, and his sittings commenced on the 15th of that month.

certificates on parchment, declaring respectively the right of the said 31 persons to be registered.

The petitions then referred to the objections to the votes, which are mentioned or referred to below, and contained allegations of intimidation, bribery and treating, all of which were abandoned.

The prayer of each was, that the petitioners Lord Forbes and Mr. Lefroy might be declared duly elected, or that the election and return of the sitting members might be declared void.

The poll.

The numbers on the poll were as follow:

Mr. Luke White - - - -	649
Mr. Rorke - - - - -	645
Lord Forbes - - - -	587
Mr. Lefroy - - - -	582

showing a majority in favour of Mr. White over Mr. Lefroy of 67.

Classes of objections.

The objections to the votes were thus classified:

1. Votes illegally admitted by the barrister.

1st class, consisting of 30 votes, admitted by Mr. Doherty, the registering-barrister, the day after he had formally closed the registry, the affidavits as to these votes not being sworn or signed, nor the certificates granted, at the special sessions:

2. Freeholds created out of leasehold estate.

2d class, consisting of 15 voters, who had been registered as freeholders in respect of a freehold estate attempted to be created out of a long term of years:

3. Persons deriving title under the Royal Canal Company.

3d class, consisting of 6 votes; lessees of property under the Royal Canal Company, which by an Irish Act of Parliament (*b*) is prevented from conferring a vote:

4. Insufficient value.

4th class, consisting of 191 votes, not having an interest of 10 *l.* after payment of rent and charges:

There were three other classes of objections which it became unnecessary to enter upon.

March 21st. John Monahan's case.

This was one of the first class of objections; and it appeared that the voter held, under two leases, 10 acres

(*b*) 30 Geo. 3, c. 20, s. 10.

of land, for which he paid 19 *l.* 4 *s.*; that he swore before the barrister that the land was worth 3 *l.* per acre; and that the case was adjourned for further evidence as to value, on the 15th November, the first day of Mr. Doherty's sitting; that no further evidence was given down to the 22d of that month, on which day Mr. Doherty, after three proclamations, and after observing that he did not intend to hear any more new cases, finally closed his court: that on the following day, at his lodgings, Mr. Doherty, without hearing further evidence, and in the presence only of the clerk of the peace, admitted 33 out of 50 cases which stood over, either for consideration or for further evidence, one of which was the case in question (*c*). The register, poll-book, affidavit, and certificate of registry were produced. On the face of the poll-book the date of registry was stated to be 15th November 1832. The affidavit concluded with the voter's signature, and the following jurat: "Sworn and subscribed before me, in open court, this 15th day of November 1832.—*James Doherty*,

Deputy assistant Barrister."

It appeared that all the affidavits were dated the first day of sitting, the 15th of November; that none of the 33 above-mentioned were sworn before Mr. Doherty; that the oath was administered to all of them by the clerk of the peace, or the town-crier, in the town-hall, on the day after Mr. Doherty closed his court (with the exception of five (*d*) whose affidavits were received by Mr. Crawford, at his office), but no satisfactory evidence was given to show that Mr. Fosberry, the other registering barrister, had previously adjourned his court; that the affidavits were prepared by the agents on either side, and handed to the clerk of the peace, who procured Mr. Doherty's signature to some before

(*c*) See, however, the evidence of Mr Doherty as to this vote, which he ascertained from his notes to have been decided in open court.

(*d*) Of these five, one voted for the petitioner Lord Forbes, and three for the sitting members. These voters were never sworn.

he quitted the town, and that the rest were sent after him to Dublin, about the 11th or 12th of December, and among them that of the voter in question: that to the certificates at the foot of those sent to Dublin, Mr. Crawford had previously affixed his signature, at Mr. Doherty's request, to satisfy him that the affidavits were authentic.

An officer whose signature is affixed to a document directed to be filed and kept among the records of a county may be examined to disprove the date apparent on the face of the document.

The greater part of the above facts were elicited from the evidence of Mr. Crawford, the clerk of the peace. It was objected by Mr. Serjt. Merewether and Mr. Pollock, on behalf of the two sitting members, that the testimony of Mr. Crawford was not admissible to disprove the reality of the date of the affidavit and certificate signed by him; and in support of the objection, the 20th section of the Irish Reform Act, and the rule of law, that a record cannot be impeached by parol testimony (*e*), were relied on. By the 20th section the barrister is required to take care that the oath shall be agreeable to the form thereby prescribed; and it provides that no objection, in point of form, shall at any time hereafter be allowed to any such oath, when signed.

Mr. Joy for the petitioners:

The question here is, whether the document was signed on the day on which it bears date. For the examination proposed a foundation has been laid by the evidence of two witnesses, who have proved the vote to have been set aside for further evidence, and that no further evidence was given, before the barrister's court finally closed: it cannot therefore be said, that the affidavit was signed in open court. The clerk of the peace has simply a ministerial duty to perform; he is not called upon by the 28th section of the Act to certify that every thing is correct. That section requires only, that on giving a certificate he shall "then and there make an entry of such certificate, at the foot of

(*e*) See 1 Strange 210, that an officer is not to be examined as to the contents of a record.

the voter's affidavit of registry, and sign his name to such entry." In the *Limerick case* (*f*) there were long rolls of voters, which three magistrates were found to have signed in blank: that irregularity was inquired into, and the petitioners succeeded in striking some hundred votes at once off the poll. That case is a sufficient authority in support of the right to examine now contended for.

22d March. The Committee allowed the examination to be proceeded with, and subsequently determined, that John Monahan's vote be struck off the poll.

Mr. Harrison then proposed to call the clerk of the peace to prove that the same objection applied to the whole of the class, but on the application of Mr. Serjeant Merewether, that the remainder of the cases might stand over, until the arrival of Mr. Doherty, who had been summoned, the third class of objections was gone into.

Francis Pilsworth and John Pilsworth's cases. The first votes in this class were those of Francis Pilsworth and John Pilsworth, who claimed as joint tenants.

Merewether Serjt. and Mr. Pollock, for the sitting members:

Committees have the power of examining into the validity of all the votes standing upon the register. An inquiry is now about to be made into the validity of votes standing on the register, which is conclusive of the right of voting. Where a legal certificate and affidavit exist, we contend that the petitioners cannot scrutinize the vote. The 54th section of the Irish Reform Act provides, that the certificate, and in default of its production, the original affidavit of registry, "shall be conclusive of the right of voting of the person named therein; and that the returning-officer or his deputy, upon the production of such certificate or affidavit by such person, and upon his taking the oaths hereinafter mentioned, if required so to do, shall admit such person to vote without any other oath or examination, and

(*f*) Minutes, 8d May 1830, the objection applied to about 580 votes.

shall indorse the initials of his name thereon, with the day and year when the same was produced; and that no inquiry whatever as to the right of voting of such person shall be permitted to be made, nor shall any scrutiny be allowed; save only that the sheriff, returning-officer, or his deputy, shall, if required by any candidate or his agent, and he is hereby authorized so to do, immediately before the polling of any voter, administer to such voter the oath in the Schedule (B) to this Act annexed." It will be contended on the other side, as the marginal note (*g*) seems to import, that the provision in this section applies only to the poll: to adopt such a construction, would be to apply a very beneficial Act of Parliament in too limited a manner, and one ill according with the rules of law; for the marginal note being no part of the enactment, the words "at the poll" would require to be inserted in aid of the construction contended for. Now if a certain meaning be imputed to the Legislature, and words are necessary to be introduced to attach that meaning to a clause, it must be held, that such was not the intention of the Legislature; for courts of law will not import words. The 22d section, which provides that the old certificates shall be "*primâ facie* evidence," shows clearly that where it was intended to limit the effect of certificates, the Legislature has adopted fit words for the purpose.

With a view to the question under discussion, it will be well to consider what was the law previously to the Reform Acts. In England there was no registration of votes. In Ireland, on the contrary, a system of registration had existed for many years, and nothing could exceed the care which had been taken to render that registration complete. Here deeds could not be required to be produced before the returning-officer, but in Ireland,

(g) The marginal note is "Certificate to be conclusive of the right of voting; and no inquiry at poll, save by affidavit in Schedule (B)."

with the view of preventing the frauds which had previously existed, the voter's title-deeds were to be produced at the sessions (*h*). There was another provision peculiar to that country, the power of issuing commissions (*i*) to inquire into facts on the spot, because of the inconvenience and expense of bringing witnesses from Ireland. Various provisions had been made, in different Acts, with respect to registry. By the 35th Geo. 3, c. 29, s. 63, an oath is required to be taken previously to voting, which, it is declared "shall be final and conclusive evidence to the returning-officer that the person taking the said oath is qualified to vote at such election, and no such voter shall be liable to any further scrutiny or examination whatsoever before such returning-officer." By the 1st Geo. 4, c. 11, s. 10, the certificate is declared to be "conclusive evidence" that the person "tendering his vote, or offering to poll, had registered his freehold (*j*)." The 10th Geo. 4, c. 8, s. 7, provides that the assistant-barrister shall investigate the title of the claimant; and section 9 enacts, that the certificate to be delivered, signed by the barrister, and by the clerk of the peace, "shall stand in the place of, and be of equal effect and authority, as the certificate of registry now by law required;" but that Act contains no clause whatever providing that the register shall be conclusive.

The 54th section, therefore, is new. It does not limit the operation of the Act to the effect of making the certificate evidence of registration at the poll. The Legislature having found former Acts ineffectual, has introduced a new clause which makes the register conclusive, so as to prevent expense and render commissions unnecessary. The Committee are aware that the Irish

(*h*) See 45 Geo. 3, c. 59, s. 4.

(*i*) See 42 Geo. 3, c. 106, s. 4; 47 Geo. 3, c. 14; 60 Geo. 3, c. 7.

(*j*) See the 4th Geo. 4, c. 55, s. 12, which declares, that the certificate of registry shall be sufficient evidence at any election, of the registry of the freehold.

Reform Act was passed subsequently to the English and Scotch Acts. All of them vary the previously-existing law with respect to the elections of members of Parliament. In the English Act is a section containing provisions as to the discussion of votes on petitions to the House. That section and its effect has been three times discussed on solemn argument (*k*), and it has been decided that the power of Committees is limited to the investigation of votes questioned before the barrister, from whose decisions a Committee is only a court of appeal. The *Petersfield case* (*l*), it is true, has determined that where a notice has been given, though over-ruled for informality, it is competent for the Committee to go into the question of the vote. No decision has yet occurred on the Scotch Act (*m*). The Irish Act, like the English, professes in its preamble to diminish the expense of elections, one considerable item of which is the proceeding on petition. To decide, therefore, that after registration the whole of the votes are here to questioned, would be to render the Act nugatory. In the present case there are 191 votes objected to, as not being of the annual value of 10 *l.* One object of the Act was, that inquiry should be made on the spot, where the value may be frequently ascertained by tests to be supplied even by by-standers; and commissions having been found both tardy and expensive, an appeal to a jury has been provided (*n*) from the barrister's decision on the question of value. On every other ground, except insufficiency of value, the barrister will have had most of the cases, where a fair ground of objection really existed, presented to him for decision; there being a more open field for opposition to a vote in Ireland, where any person on the register, or who has

(*k*) See *Petersfield, Oxford* and *Bedford cases*, ante.

(*l*) ante, p. 51.

(*m*) The *Linlithgow case*, post., is a decision on the Scotch Act, in accordance with those of *Oxford* and *Bedford*.

(*n*) See 2d & 3d Will. 4, c. 88, s. 24.

served a notice to register at the same sessions is entitled to object without previous notice (*o*). On such cases then an appeal to the House still exists. Now suppose an appeal on the question of value to have been made to a judge and jury, and a trial had upon evidence on the spot, and then this Committee to be called upon to question that decision, could any proposition be conceived more extravagant? The attention of the Committee has been particularly called to this provision, because no such appeal is given by the English Act, and, therefore, as it is an universal principle of our law that no man can be deprived of a right, except by the decision of some court from which there is an appeal, the Legislature has provided an appeal to Committees against the decisions of the English barristers.

The 55th section is in favour of our construction of the Act: it contains a saving of "all laws, statutes and usages now in force, save so far as they are respectively repealed or altered by this Act;" upon which we contend that the right of a Committee to go generally into the register is repealed, because the ancient law has been altered, no previous statute having contained the provision "that the certificate shall be conclusive of the right of voting." It is worthy of notice that no statute is recited in any of the Reform Acts; will it then be said on the other side, that the 55th section was inadvertently introduced by the Legislature into the Act, and is wholly nugatory, because no other section contains express words of repeal? If not, it is plain that the Legislature contemplated some "laws, statutes and usages" as repealed by the provisions of the Act. The well-known rule of construction, "*expressio unius est exclusio alterius*," is very applicable to the present Act, for we may observe on the face of it a clear indication that the Legislature took into its consideration how far

(*o*) See 2d & 3d Will. 4, c. 88, s. 18.

the generality of the 54th section would operate on the right of Committees, for it has in effect declared by the 59th section (*p*), that, though former laws have been altered, and the rights of Committees have been diminished as to other points, yet they may go into the question of the disqualification by office of any voters.

Mr. Harrison for the petitioners:

The object of the Act was undoubtedly to save expense; this, however, was not its only object, as may be collected from the preamble, which is as follows: "Whereas it is expedient to extend the elective franchise to many of His Majesty's subjects who have not heretofore enjoyed the same, and to increase the number of representatives for certain cities and boroughs in that part of the United Kingdom, and to diminish the expenses of elections *therein*." It has been assumed on the other side, that every expense was intended to be diminished, and it has, therefore, been contended that the words "elections therein" are to be so construed as to throw impediments in the way of bringing cases before Committees of this House upon petition. If this shall be the construction put upon the Act, this new law will be anything but an amendment of the representation of the people, for it will lead to the commission of many frauds. The constituency was in-

(*p*) That section provides, "That if any person, at the time of any election, being in the enjoyment of any office disqualifying him from voting at such election, or being *otherwise* disqualified, or having ceased to be qualified, shall, notwithstanding, presume to vote at such election, such person shall forfeit to His Majesty a sum of 100 *l.*, and shall be subject to all penalties, forfeitures and provisions to which he would have been subject for such offence by any law in force at the time of committing the same; and in case of a petition to the House of Commons for altering the return, or setting aside the election at which such person shall have voted, his vote shall be struck off by the Committee, with such costs as to them shall seem meet, to be paid by him to the petitioner."

tended to be respectable; the result of this construction will destroy that intention. The counsel for the sitting members have assumed that the decisions on the *Petersfield*(*q*), *Oxford*(*r*) and *Bedford*(*s*) *cases* are to be taken as conclusive of the question; the authority, however, of these cases, is by no means such as to preclude the attempt to obtain their reversal; an attempt, the success of which would be hailed with satisfaction by some of the first lawyers of this country.

The construction on the other side is opposed to all the great constitutional principles laid down by ancient writers, and to the rules of construction to be found established by modern authorities (*t*).

The 54th section of the Irish Act has been relied on, and the Committee has been asked to look only at the first part of the clause, and then, though the subsequent words plainly confine its operation to proceedings at the election, they are to adopt the conclusion that the powers of Committees are excluded by implication, and this after all the objects of the Act have been effected; for it has diminished expenses in boroughs by annihilating scrutiny and investigation at the poll; and by shortening the duration of elections. It has been laid down, on the other side, as an universal principle of our legislation, that there is no instance in which an appeal does not lie to a higher tribunal. Here the appeal is all on one side; the parties against whose right to vote we have to contend on the present petitions might, if the barrister had decided against them on the question of value, have appealed, under the 24th section, to the judges of assize and a jury;

(*q*) ante, p. 56.

(*r*) ante, p. 93.

(*s*) ante, p. 123.

(*t*) Mr. Harrison here repeated the line of argument pursued by him in the *Oxford case*, and cited the same authorities, and, in addition, the cases of *Goldson* v. *Buck* 15 East, 372; *Shipman* v. *Henbest*, 4 T. R. 109; and *Cadogan* v. *Kennett*, Cowper, 434. See ante, p. 82, notes (*z*), (*a*).

but we have no appeal. This case then, having been shown to be an anomaly upon the construction contended for on the other side, will the Committee allow that construction to prevail? The question is one of deep importance, no less, indeed, than this, shall the constituency provided for by the Act be preserved, or the intention of the Legislature be utterly frustrated by the decision of this Committee?

The Committee determined "that they had the power to examine into the validity of the votes standing upon the register (*u*)."

An Act of Parliament having declared that persons deriving title under a Canal Company shall not be entitled to vote at elections, and the Company having been dissolved, and the property vested in the former shareholders by a subsequent Act, (not containing a similar declaration), incorporating the shareholders into a new company; held, that lessees, under a lease dated since the formation of the new company, were entitled to vote.

The cases were then gone into. The affidavits of registry stated the property to be held under leases for 900 years, bearing date the 15th Sept. 1821, and made between the New Royal Canal Company of the one part, and the voters of the other part. It appeared that the Royal Canal Company having been incorporated in the 29th Geo. 3 (*x*), an Act was passed in the following year (*y*), the ninth section of which empowered the Company to purchase lands beside those to be used for the purposes of the navigation, not exceeding in value 500 *l.* a year; and "to grant, alien, demise or dispose of the same lands at their free will and pleasure." The 10th section then provided, "that it shall not be lawful for any of the member or members of the said company, or for any person whatever, to vote at an election of any member or members of Parliament for any city, county or borough within this Kingdom, in right of any estate or interest in any lands, tenements or hereditaments which may be purchased or acquired by the said Company by virtue of or in pursuance of any of

(*u*) See the *Galway case*, post, in which the Committee permitted the counsel for the petitioner to go into their objections to a freeman's vote, unobjected to before the barrister; and the *Coleraine case*, post., where a vote rejected by the barrister was allowed to be discussed before the Committee.

(*x*) The Charter is dated 1st October, 29 Geo. 3.

(*y*) 30 Geo. 3, c. 20.

the powers by this Act vested in the said Company, and that no person whatever shall, by virtue or in right of any grant, lease or demise whatever, made to him by the said Company, of any *such* lands, tenements or hereditaments, or of any estate or interest therein, *derived mediately or immediately under the said company*, have or acquire any right whatever to vote as an elector on any such election as aforesaid, anything in this Act contained to the contrary notwithstanding."

The Company having become much embarrassed, the 53d Geo. 3, c. 101, was passed, by which the company was dissolved, and commissioners were appointed to examine the claims of its creditors, and to make arrangements for completing the canal from Dublin to Tarmonbury, on the river Shannon. The canal, lands, and buildings were vested temporarily in the Directors-general of Inland Navigation in Ireland. The powers vested in the commissioners of inquiry were, by the 55 Geo. 3, c. 182, s. 2, given to the Directors-general. The 58 Geo. 3, c. 35, by which the holders of loan debentures issued by the dissolved company were incorporated under the title of the "New Royal Canal Company," contained no clause similar to that before referred to in the 30th Geo. 3, c. 20.

The Committee determined that the votes were good. The chairman stated the grounds of the decision to be, that the date of the leases was subsequent to the formation of the new company, and that the old company being at an end, there was nothing in the new Act to affect the right to vote.

Michael Green's case. Lessee for life of town lands in L., under one who held a grant from the Crown of "the

The counsel for the petitioners then proceeded to question the vote of Michael Green, one of the names included in the second class of objections. This person voted for lands in the barony of A., and was registered as a freeholder. It appeared that the lands were "town lands," and that the voter had admitted before the barrister, that he held under Mr. Tuite. An examined copy

town and lands of L." for 1,000 years, is entitled to vote in the absence of other evidence of identity of the parcels.

of a grant from King James the Second, in the second year of his reign (1685), was produced, by which "the town and lands of L." were granted to an ancestor of Mr. Tuite for the term of 1,000 years. A search had been made at the Rolls-office in Dublin a few days previously, for the purpose of ascertaining if a grant of the reversion had been made by the Crown to Mr. Tuite, but none such had been found. It appeared also that Mr. Tuite held all the lands in L.

Mr. Follett:

This case is without an answer. The man has registered and voted as a freeholder, though he stated that he held under the Tuite family, who are lessees for years under the Crown, and cannot therefore grant a freehold interest to the lessee.

Merewether, Serjt.:

If it were meant to have been proved that Mr. Tuite did not grant a freehold interest, notice should have been given to the voter to produce his lease. The case now stands upon the presumption that the voter had a legal title, for he has been registered, and has voted before. The words of the grant would comprise all the lands which the Crown possessed, but Mr. Tuite's ancestor might have held lands there which did not belong to the Crown, and then, as the presumption should be in favour of the vote, it is fair to assume that the voter holds some of those lands.

The Committee decided that the vote of Michael Green do stand on the poll.

The counsel for the petitioner having entered upon the fourth class, and the Committee having decided on the votes of Bryan Curneen and Thomas Farrell (the former of which was declared to be bad and the latter good) on the evidence of two commissioners under the Tithe Composition Act, and that of the late agent of Mr. Fulke Greville, the owner of the lands held by the

voter, the vote of Lawrence Farrell came under discussion. It was proved that his rent was 18 *l.* 6 *s.* for 11 ¼ acres of land with a house. The estimated value was 20 *l.* 14 *s.* 6 *d.* at the outside. He was three years in arrear. Before the barrister he swore he would not let the whole for less than 15 *l.* a year profit rent. Lawrence Farrell's case.

The Committee directed that the question, "What legal interest a party must have to acquire a right to vote?" should be argued by one counsel on each side. Mar. 26th.

Mr. Follett for the Petitioners:

The object of the Committee is understood to be to gain information as to how the 10 *l.* value is to be ascertained. The mode of ascertaining *the value* of property, wherever the Legislature has used the term, is to discover what it will produce in the market. Courts are constantly in the habit, on questions of damage, of using the term value in this sense. The Irish Act has made no alteration in the mode of ascertaining the value, the true criterion of which, in the case of leaseholds, is what the property would produce in the shape of rent over and above the rent originally given for it. This course has been pursued in the cases of qualifications under the game laws (*z*), under the laws of settlement, *Rex* v. *Hellingley* (*a*), and under the jury law. If it had been shown under the old law, that an estate let at 40 *s.* a year, *primâ facie* that would have been the value. Suppose a lease for lives had been granted at 5 *l.* a year, the grantee would have had a vote if the property would have let for 40 *s.* above that sum. The freeholder's oath under the 35 Geo. 3, c. 29, s. 46, (Irish Act), and that in England under the 18 Geo. 2, c. 18, s. 1, both require the freehold sworn to, to be "of the clear yearly value of 40 *s.* above all charges payable out of the same." In like manner the 10 Hen. 6, c. 2, requires that the voters for knights of counties "every one shall have

A freehold or leasehold which is of the yearly value of 10*l.* and which yields or is capable of yielding that value to the claimant, over and above all rents and charges, except those mentioned in the 10th section of he Irish Act, will give a right to vote.

(*z*) *Wetherell* v. *Hall* (Durham Assizes 1782), 2 Lud. note (G) 588.

(*a*) 10 East. 41; *Rex* v. *Aston*, 6 M. & S. 54.

freehold to the value of 40 *s.* by the year at the least above all charges."

The mode of ascertaining "the value" before the passing of the Reform Act will be shown by the following authorities.

In the *Bedfordshire case* (*b*) the resolution of the Committee was, "that the value of a freehold, in right of which the owner votes, is the rent which a tenant will give for it; and not what the owner, occupying it himself, may possibly acquire from it." The same point arose in the *Middlesex case* (*c*), and was similarly decided. The first of these cases is recognised by Mr. Heywood (*d*) as a decisive authority.

Such was the law under the old English and Irish Acts. In the recent statute 10 Geo. 4, c. 8, which was drawn by the present Chief Justice of the Common Pleas in Ireland, with the view of preventing in future the creation of such votes as the Coldblow-lane voters (*e*), it is provided, in section 2, that no person shall vote at any election of a knight of the shire unless he has a freehold estate "of the clear yearly value of 10 *l.*" The oath in Schedule VI. of that Act contains the words "clear yearly value," and also the following, "and that a solvent and responsible tenant could, as I verily believe, afford to pay for the same as an additional rent, fairly and without collusion, the annual sum of 10 *l.* over and above all rent to which I am liable in respect thereof," thus plainly indicating by what mode the value was to be ascertained (*f*).

Then follows the Irish Reform Act, upon which it is

(*b*) 2 Luders, 449.

(*c*) 2 Peck. 104. *Rolph's case.*

(*d*) Heywood on CountyElections, p. 86.

(*e*) These persons claimed to vote in respect of freehold leases, renewable for ever, which had been granted out of a piece of ground, about a perch square, and not worth 10 *s.* a year. See Hudson on the Elective Franchise in Ireland, p. 98.

(*f*) See the debate on the third reading of the Irish Reform Bill in the House of Lords, Mirror of Parliament 30th of July 1832.

not understood that any doubt affecting this question has been raised, except on the words "beneficial interest (*g*)." That Act gives a right to vote to leaseholders, who did not possess it before, and it requires that they shall have "a beneficial interest" in their leases "of the clear yearly value of 10 *l.* or 20 *l.*" as the case may be. The word interest is specially applicable to a term of years, as in Co. Litt. 345 b (*h*). A question often arises under the operation of the Bankrupt Act, whether a lease is beneficial or not, with a view to the determination of the assignees as to taking it or not: if at a rack-rent, then the assignees will of course decline to take it; if it be, on the contrary, one capable of yielding a rent above what the bankrupt was liable to pay for it, in other words, a beneficial lease, they will accept it for the benefit of the creditors.

No well-grounded reason can be shown for applying a different criterion in estimating the value of an interest in a lease from that adopted with respect to freeholds. Under the 20th section of the English Act, and the second section of the Irish Act, the beneficial interest of the freeholder and copyholder respectively, is the full value which each respectively receives or may receive by letting to a tenant: so in the case of a leaseholder, under the first section, the rent he has to pay being first deducted, the value should be the surplus rent the premises are capable of yielding.

By the 16th section the claimant is required "to make it appear that the property in respect of which he

(*g*) These words were introduced as an amendment by Mr. Serjeant Lefroy, the father of one of the petitioners in the above case. See Mirror of Parliament 25th June 1832.

(*h*) The passage here referred to is as follows: "Interest. *Interesse* is vulgarly taken for a term or chattel real, and more particularly for a future term; in which case, it is said in pleading, that he is possessed *de interesse termini*. But *ex vi termini*, in legal understanding, it extendeth to estates, rights and titles that a man hath of, in, to, or out of lands; for he is truly said to have an interest in them."

seeks to be registered is of the value and nature by this Act prescribed." Then the 24th section directs the judges of assize "to try and inquire by the verdict of a jury whether such property is of the annual value within the meaning of this Act at which the claimant seeks to register such vote."

The question before the Committee has been, in fact, decided by the Chief Justice Doherty, with the assistance of the Lord Chief Baron, in the case of *Patrick Bellew* (*i*), whose claim had been rejected by Mr. Fosberry on the ground of insufficient value. The claimant held six acres of land, one acre at a peppercorn rent, and the other five at the rent of 7 *l.* 10 *s.* On the single acre there were a house and offices; he estimated the whole worth 10 *l.* a year to him, but would not swear what another would give for it. It was contended by his counsel that the oath to the jury (*k*) should authorize them to try whether the claimant's lands were worth to him 10 *l.* over and above his rent, labour, taxes and expenses, and that the jury should be directed to take into consideration the value of the claimant's house, his crops, taxes and expenses, and to declare him entitled to register if they should find him to have a beneficial interest to the value of 10 *l.* yearly to him. Both the learned judges agreed in the decision, that there was no intention expressed or implied in the words of the Reform Act to vary the estimate of the value of the 10 *l.* freehold which was to confer the franchise, and in the absence of any such intention, the qualification of a 10 *l.* freeholder under this Act must be taken to be the same in value as that required by the 10 Geo. 4. The Chief Justice added, "It was the policy of that Act to put an end to the revolting system

(*i*) 25th October 1832. See Hudson on the Elective Franchise in Ireland, p. 85. Gumley's Law of Elections, Appendix, p. 8.

(*k*) See Molyneux on the Irish Reform Act, p. 39, note on the oath, cited by Mr. Follett, as well as the two authorities in the last note.

of perjury which had prevailed previous to 1829, by substituting a fixed, certain and unerring criterion of value for the fallacious estimate of it formed by the claimant himself." In accordance with this decision are the cases of the *King* v. *Trustees of the Duke of Bridgewater* (*l*), the *King* v. *Ashfield-cum-Thorpe* (*m*), and *Ward* v. *Const* (*n*), in which last "the beneficial interest" in a house leased at 25 *l.*, but worth 90 *l.*, was held, for the purposes of the Land-tax Redemption Acts, to be 65 *l.* a year.

Mr. Pollock for the Sitting Members:

It will not be disputed that the cases which have been cited are authorities that so far as regards the qualification under the game laws, the qualification of jurors, and the valuation of tenements to give a settlement, rent is a criterion of value, but it is not the only one. As to the quotation, however, from Coke-Littleton, one of the best authorities in the law, if it has been cited with the view of distinguishing "interest" from "property," the meaning of the definition has been mistaken. A man may as well be said to have "an interest" in land as "a property," there being no magic in words. "Interest" and "beneficial interest" have no exclusive reference to a term of years.

The decision of the Chief Justice and the Chief Baron must be admitted to press much against the argument in favour of the vote; but as great or greater lawyers have given decisions shortly after an Act passed, which have subsequently been reversed, it will not be assuming too much to suppose that a possible event in the present instance.

The argument on the side of the sitting members will be confined to the construction of the Reform Acts, without reference to any other. The Committee will

(*l*) 9 B. & C. 72; and see the *King* v. *Joddrell*, 1 B. & Adol. 403.
(*m*) 9 B. & C. 940.
(*n*) 10 B. & C. 652.

recollect that there were three Acts passed, with the one common object of amending the representation of the people, and if, without travelling out of those Acts, they can see their way to a sound construction of that under consideration, they will do well to adopt that construction. In all these Acts, it is observable, that the same words are used. The words "clear yearly value" are to be found in the 20th section of the English Act, and in the 7th and 9th sections of the Scotch Act; so in the Irish Act, the words "beneficial interest therein of the clear yearly value," &c. When oaths are to be administered, the oaths are the same. The same construction should, therefore, be applied to all these Acts. Now let it be examined whether any of the Reform Acts will enable the Committee to see what is the construction to be put upon all, and thus avoid the incongruities of system which it was one object of these Acts to prevent. The 7th section of the Scotch Act contains, after the mention of the value of 10 *l.*, the following words, "and shall actually yield or be capable of yielding that value to the claimant, after deducting any feu duty, ground annual, or other consideration which he may be bound to pay;" and by the 9th section, it is provided that where the rent is payable in grain, "the value shall be estimated according to the average fiars of the counties in which the heritable subjects are situated for the three preceding years, and when payable in any other species of produce, according to the average market prices of the neighbourhood for the same period" (*o*). It appears, therefore, perfectly clear, that the Legislature has in this Act defined the mode in which the actual value is to be ascertained, viz., what the land is capable of yielding to the

(*o*) The concluding part of this proviso does not appear to favour the argument in the text: "And the said values being *once so fixed* at the time of registering or refusing to register, shall be held as *settled* for the whole period of the lease."

claimant beyond his rent and other charges. All these Acts, then, being passed in *pari materiâ*, and intended to have the same species of operation, should receive the same construction.

Let it now be assumed, for the sake of argument, that the value of the land must be estimated by the rent which a solvent tenant could afford to give for it; this absurdity then presents itself, that landlords are to be supposed to grant leases at lower rents than they could obtain themselves. It is well known that in all marriage settlements, the tenant for life has no power to take a premium, but is required to get the best rent; but in order to give a beneficial interest to their lessees, landlords must have let at lower rents than could have been got for their lands. In fairness, it ought to be granted to us that the landlord would let at the best rent which could be obtained: and if so, no tenant could obtain a vote.

Next, let it be granted that the construction contended for by the counsel for the petitioners is a right one, how will they answer the second absurdity which arises under the English Act? The 20th section provides that persons shall be entitled to vote who are lessees for a term, originally of 20 years, in lands of the clear yearly value of 50 *l.* over and above all rents and charges payable out of or in respect of the same; this, according to the other side, would render proof necessary that the lands could be let at 100 *l.*, in order to entitle the lessee to vote. Did it ever enter the head of any one to require such proof?

The Committee will not follow a construction which leads to absurdities such as these. Though it might be easy for lessees for lives usually holding at a low rent, to obtain votes, it would not be so for other lessees. That mode of construction, therefore, must not be adopted with respect to one class, which, applied to others, would deprive them of the right to vote altogether, and consequently could not have been the

one intended by the Act. So long as the oath retained the provision as to what "a solvent tenant could be found to give," that furnished a rule of construction; but it has been here omitted, and, notwithstanding the direction of the Chief Justice to the jury to adopt that mode of estimating the value, we must assume that omission to have been advisedly made (*p*). The construction contended for on the other side would have the effect of destroying the higher constituency intended to be created by the Act, and therefore also the first object of the Act, which was "to extend the elective franchise."

The Committee determined that the vote of Lawrence Farrell was a good vote.

They also resolved, "That the right to vote for a freehold or leasehold in Ireland is in such freeholder or leaseholder, where the property for which he claims shall be of the yearly value of 10 *l.*, and shall actually yield or be capable of yielding that value to the claimant after deducting all rent and charges payable out of the same, except only public or parliamentary taxes, and other charges mentioned in the 10th section of 2 & 3 Will. 4, c. 88."

The scrutiny then proceeded, and nearly 30 votes of class 4 were ordered to be struck off the poll.

1st April. Wm. Cosgrave's case.

Similar evidence to that in Monahan's case was offered as to this voter.

Mr. Doherty, who had been summoned, was then examined. He stated that he adjudicated every case in open court (*q*); that in his examination of the voters he took up the form of oath, and put questions to them in the words of it; that John Monahan's vote stood over only for the purpose of enabling the objecting party to prove the

(*p*) See the 24th section of the Irish Act, where the jury is directed to inquire whether the property is of such annual value "within the meaning of this Act."

(*q*) Mr. Doherty admitted that the noise was so considerable in his court, that he might not have been heard to give his decision.

value insufficient; that his leaving the court in the manner which had been proved was done to accommodate the counsel and not with the intention of a final adjournment; and that when the clerk of the peace read over the names at his lodgings, he used the words "admit," "reject," in order to enable that officer to supply omissions in his book.

Mr. Serjeant Merewether and Mr. Pollock for the sitting members:

The cases before supposed to have been adjudicated at Mr. Doherty's lodgings, are now satisfactorily proved to have been decided in open court. The affidavit and certificate were no part of the right to vote, but merely evidence of that right. The right, therefore, having been determined in open court, it would be of little importance in what place the affidavit and certificate were signed. If there were no affidavit or certificate, as might happen in the case of the office of the clerk of the peace being destroyed by fire, still the voter would be entitled to vote.

Suppose, however, the affidavit and certificate to be necessary ingredients in the voter's title. The 19th section declares that the person declared entitled to be registered, shall verify his title by affidavit, and shall take and subscribe (as the case may be) the oath stated in the schedule. Now, of two acts which are concurrent, it is immaterial which precedes. Where then the voter has been sworn to the points in the affidavit before adjudication has taken place, as in the present case, the Committee will surely hold that the affidavit has been substantially taken. Verifying by affidavit is taking the oath. The Act itself has taken a distinction between taking and subscribing; it has assumed that the oath may be subscribed and not taken, taken and not subscribed. Here every one of the voters took the oath, and it is immaterial whether subscription took place at that time or afterwards, if the oath itself was taken

in open court, which, for the sake of argument, we assume to be necessary, though we by no means concede it.

Again, the Act has provided, that the affidavit is to be filed of record (*r*), that no objection in point of form shall be allowed after signature (*s*), and that the certificate shall be conclusive of the right of voting (*t*). The affidavit, then, being a record, no averment can be taken against it, Co. Litt. 117 *b*, 260 *a*; *Zouch* v. *Bamfield* (*u*); *Colchester case* (*x*). Many instances, too, may be found in the books where statutes are held to be directory and not conclusory; *New Radnor case* (*y*), *Colchester case* (*z*), *Middlesex case* (*a*).

With respect to any alleged informality in the proceeding, it was formally admitted by the counsel for the petitioners, in his opening, that the illegality of the barrister's appointment could not affect the rights of the electors; *à fortiori*, therefore ought not an informality in the proceedings of a properly authorized officer; and here, if blame attaches to any one, it must be to Mr. Crawford, who sent to the barrister attestations under his own hand that the oath had been taken in open court. It is now sought to deprive these parties of their right, because of the misconduct of Mr. Crawford. The consequences of holding that the informality of the barrister's proceedings will avoid votes, will be most extensive and unjust in their operation; in England a county or district may be deprived of representatives for a whole year, and voters will be put in a worse condition than persons refused to be registered or to be put on the poll; with respect to these latter, entry of the name in the poll-book is conclusive evidence of their having tendered; 1 Lud. 146; Corb. & Dan. 263. In the present

(*r*) Sec. 20.
(*s*) Sec. 20.
(*t*) Sec. 54.
(*u*) 1 Leon. 82.
(*x*) 1 Peck. 509.
(*y*) 1 Dougl. 342, note (D).
(*z*) 1 Peck. 506.
(*a*) 2 Peck. 357, 360; and 3 Taunt. 540.

case, as the qualification has not been objected to, that must be taken to be good; consequently these voters have all the proof of persons who claim on the ground of tender and refusal; and surely stronger proof should be required to place a vote on the poll than would be necessary to retain upon it one already there.

Mr. Harrison for the petitioners:

This case is as clear as any that ever came before a court. It has, indeed, been contended that irregularities are not to be regarded, provided the party has a right to vote; and that if there be an affidavit, whatever may be the extent to which blunders have been committed, still it is a record, and is not to be impeached: if all the requisites of the Act have been neglected, still we have no right to call the affidavit in question. These doctrines, if acted upon, would render proceedings before Committees, and the Act itself, nugatory. It is said on the other side that the affidavit and certificate are the evidence. We say the Act has prescribed what the evidence is to be, and that evidence must be produced. In the case referred to of a tender, the party must prove his right. The Irish Act has made the affidavit and certificate evidence of title, which, unless these are properly made, must fall to the ground. The direction that the affidavits are to be kept among the records does not necessarily make them also records.

We have no wish to impeach Mr. Doherty's credit, but insist that Mr. Crawford is equally free from impeachment. It is quite clear that the adjudication alleged to have been made was not made so as it might be heard. Mr. Doherty was surrounded by hostile agents, to whom every word falling from him was a subject of interest, and yet the adjudication was not known to any. The argument that ministerial acts do not avoid an election has here no application. If the voter has done all he can to establish his vote under the

Act, then he is not to be affected by ministerial acts. The examination by Mr. Doherty was no doubt very regular, but the 19th section requires the barrister to "declare and adjudge," and then the party is to take and subscribe the affidavit; the real point, therefore, for the decision of the Committee is, whether, the Act being in these terms, the affidavit must not be taken, after adjudication, before the barrister. The distinction referred to on the other side assists our argument, for the affidavits have been subscribed, but they certainly were not taken. No prosecution for perjury could be sustained upon such a state of facts.

The 32d section provides that no registry shall be valid unless made conformably to the provisions of the Act. We are here inquiring whether the register is made according to the provisions of the Act. It has been said that if the affidavit and certificate be lost or burnt, the party may still vote; that, however, is not so. The vote could not be admitted at the poll, because those documents are the only proper evidence of the voter's right.

The Committee decided the vote of Wm. Cosgrave to be bad.

The remainder of this class were then struck off the poll.

James Macloghlin's case.

This was another of the 2d class of objections. An affidavit was produced from Mr. Tuite (*b*) (who therein stated himself to be 86 years old, and too infirm to travel), to the effect that he was not seised in fee, or of a freehold interest, of any lands in Ardagh.

Mr. Serjeant Merewether cited the *Gloucester case* (*c*), where a vote, under similar circumstances, had been admitted. There a deed had been produced of the pre-

(*b*) The admission of this affidavit as evidence had been previously assented to by Mr. Serjt. Merewether.

(*c*) Gloucester, 183, *John Shurman's case.*

mises in the time of Queen Elizabeth for 1000 years, and in 1700 one Bailey, from whom the voter's title was deduced, had granted them in fee.

The Committee decided the vote to be bad.

Mr. Serjeant Merewether and Mr. Pollock, on behalf of the two sitting members, then disclaimed the seats.

Mr. Joy proceeded to disqualify the remaining tenants under Mr. Tuite, after answering an observation of Mr. Serjt. Merewether that this was unnecessary, the seats having been abandoned (*d*). A majority having been established for the petitioners, Lord Forbes and Mr. Lefroy, the Committee resolved,

"That Luke White, Esq., and James Halpin Rorke, Esq., were not duly elected.

"That the Hon. George John Forbes, commonly called Lord Viscount Forbes, and Anthony Lefroy, Esq., were duly elected.

"That neither the petitions, nor the opposition to them, were frivolous or vexatious.

"That the Committee have to inform the House that they have altered the poll taken at such election by striking off John Monahan, &c. (74 names in all)."

(*d*) See note to *Waterford case*, 1 Peck. 239.

CASE IX.

BOROUGH OF RIPON.

The Committee was appointed on the 26th of March 1833, and consisted of the following Gentlemen:

Lord Cavendish, M. P. for North Derbyshire, *(Chairman.)*

George Grote, Esq. M. P. for London.
H. G. Ward, Esq. M. P. for St. Alban's.
George F. Heneage, Esq. M.P. for Lincoln City.
William Congreve Russell, Esq. M. P. for East Worcestershire.
George Evans, Esq. M. P. for Dublin County.
Lewis Fenton, Esq. M. P. for Huddersfield.
John Gully, Esq. M. P. for Pontefract.
Colonel Maberley, M. P. for Chatham.
Sir Richard Keane, Bart. M.P. for Waterford County.
Frederick Paget, Esq. M. P. for Beaumaris.

Petitioners:—Electors.

Sitting Members:—Thomas Kitchingman Stavely and Joshua Samuel Crompton, Esqrs.

Counsel for the Petitioners:—Mr. Harrison, Mr. Follett and Mr. Rogers.

Agents:—Messrs. Henderson and St. John.

Counsel for the Sitting Members:—Mr. Serjeant Merewether, and Mr. Wood.

Agents:—Messrs. Vizard and Leman.

Petition.

THE petition stated that at the last election of burgesses to serve in Parliament for the borough of *Ripon*, the sitting members and Major-Gen. Sir James Charles Dalbiac, and Wm. Markham, Esq. were candidates.

The statements in the petition, which were proceeded upon, raised a case of scrutiny, on the grounds of the improper insertion of votes in the lists, or of their being improperly retained there, by the decisions of the revising barrister.

It prayed a declaration that neither of the sitting members were duly elected, and that neither of them ought to have been returned, but that the said Sir Charles Dalbiac and William Markham were duly elected, and ought to have been returned.

In this borough the whole constituency amounts to 340, of which there voted for each of the sitting members 168; for Sir Charles Dalbiac 162, and for Mr. Markham 160. The poll.

The first vote which came under discussion was that of George Snowden. A notice of objection to the name of the voter being retained on the list had been served on the overseer, but it contained no statement of the objector's place of abode. The revising barrister had decided to retain the name on the list. George Snowden's case.

Mr. Serjt. Merewether, for the sitting members, contended that the notice was informal, and in support of his objection cited the cases under the Annuity Act, referred to in the *Bedford case* (*a*), and *Metcalf* v. *Bowes* (*b*), and *Doe* v. *Bromley* (*c*); and he insisted that proof by the objector of a notice, in the form required by the Act, was necessary to give the barrister jurisdiction.

Mr. Harrison, for the petitioners, cited the 3 Geo. 4, c. 92, by which, in effect, the decisions relied on are declared to be of doubtful authority, and stated the *Petersfield case* (*d*) to have decided that the notices

(*a*) *ante*, p. 120.

(*b*) 5 B. & C. 258; see, however, *Phillips* v. *Const.* 3 Russ. 207 *contra*, and 7 Geo. 4, c. 75.

(*c*) 6 D. & R. 202.

(*d*) *ante*, p. 49.

In a very recent case a question arose on the wording of the 7 Geo. 4, c. 46, s. 4, which provides that before a banking copartnership, ex-

were no longer of use after the names of the persons objected to were inserted by the overseer in his list; a decision supported by the form of the notice itself, which was to be addressed to the overseer, and contained the words "I hereby give *you* notice, &c." The only notice required to be given to the party was that directed to be placed on the church-door, which the barrister must have satisfied himself had been done.

The Committee resolved, "That the counsel for the petitioners be at liberty to proceed with the case of George Snowden."

28th March. The following resolution of the Committee was next day communicated to the parties:

"That the Committee, in their decision of yesterday, are not to be understood as admitting the validity of a notice of objection given without specification of the place of abode of the objector; but inasmuch as the vote of George Snowden, notwithstanding this omission in the notice of objection, did actually become matter of discussion before the revising barrister, the Committee are of opinion that this circumstance suffices to bring it within their jurisdiction, without determining whether the notice of objection on which the overseer or barrister acted was or not in perfect form and order."

Mr. Rogers then stated, that the objections to George

ceeding the number of six persons, shall begin to issue any bills or notes, &c. a return shall be made out, according to the form contained in a schedule, wherein shall be set forth the names and places of abode of all the parties engaged in such copartnership, as the same shall appear on the books of such copartnership, such return to be delivered to the Commissioners of Stamps in London. A verdict having been given for the Huddersfield Banking Company, and a rule *nisi* having been obtained, on the ground that, in some instances, the return did not mention the places of abode of the partners, Lord Tenterden and Parke, J., both expressed their opinions that such an omission would not make the return void. *Armitage* v. *Hamer*, 3 B. and Adol. 796, 797.

Snowden's vote were, that he was not qualified as occupier, and not rated.

Mr. Wood objected, that the question of rating could not be gone into, because it did not form the subject of objection before the barrister, the question of occupancy alone having been submitted to him, to which, therefore, the appellate jurisdiction reserved to the Committee by the 60th section could alone extend.

An objection not taken before the barrister may be raised before a Committee.

The Committee, after hearing Mr. Rogers in answer to the objection, resolved, "That this Committee considers itself competent to hear evidence as to whether George Snowden was rated or not?" (*e*)

The entry in the rate-book was then produced: it was in this form:

The rate-book is conclusive evidence on the question of whether rated or not.

Owner.	Occupier.	Parcels.
Ripon Navigation	Mr. Alderman Farrer pays	George Snowden's coal yard.

In the poll-book the entry was, George Snowden, house and yard, Bondgate-green.

In another part of the rate-book the voter was rated as "owner and occupier." He held a house and yard, as a tenant to a Mr. Oxley, at a rent of six guineas, which Mr. Oxley stated, in his examination, to be within a guinea of the annual value.

The Committee then suggested that Mr. Wood should call evidence to prove the fact of rating for the coal-yard, on which there was a small hovel.

Mr. Rogers submitted that the rate-book was conclusive.

Mr. Wood contended, that the entry being ambiguous, he was entitled to call evidence to explain it. The

(*e*) In the *New Sarum case*, post., the Committee required proof to be given of the subject of discussion before the barrister. *Joseph Burfoot's* case.

the occupant of the whole premises. The *Bridport case* (*h*) was, however, an authority in favor of the voter. In that case there was only one outer door, and but one staircase to the house, which was occupied by several persons, and yet the voter was held entitled. In the *King* v. *North Collingham* (*i*), the pauper had let a room unfurnished to a lodger at 1 *l.* 10 *s.* a year. The room communicated with the yard belonging to the house by an outer door, and with the adjoining rooms of the house by an inner door, of which doors the lodger kept the keys. There was another outer door to the house. The pauper was assessed and rated, and paid all assessments. The court held that the house continued to be the separate and distinct dwelling-house of the pauper within the meaning of the 59 Geo, 3. c. 50.

Mr. Rogers for the petitioners:

This house was originally a single one, for which reason a right of common was attached to the ownership of the whole building. The entrance to it had been described to be a door bolted at night, opening into a passage which was open towards the garden. The doors to the rooms of Mariner and Knaggs must be taken to be outer doors; their occupations had every character of a distinct tenement, even staircases exclusively belonging to them; and they had been so regarded on the sale, and in every feature of the transactions which had taken place respecting them.

The resolutions in the *Cirencester case* had always been considered and adopted as authorities, and stood unimpeached, except by the *Bridport case*, which was not reported, and of which little was therefore known. Certainty in law was one of its greatest perfections.

(*h*) Minutes, 6th June 1820; *Thomas Edwards's case.*

(*i*) 1 B. & C. 578, In this case the court took a distinction between *holding* and *occupying*, which, if maturely weighed, would seem to be an authority against the vote. See the *King* v. *Macclesfield*, 2 B. & Adol. 870.

He trusted, therefore, that the Committee would not decide against the authority of the *Cirencester case*, from which it had not been even attempted to distinguish the present.

The Committee resolved, "That in the opinion of this Committee, Robert Casey is in the legal occupation of the whole of these premises (*k*)."

(*k*) The following case is almost identical with that of Robert Casey, except in the decision upon it. The work* from which the extract has been made, contains the decisions of the judges on appeals from the commissioners of taxes.

John Archer and Thomas Gun, being charged jointly with a duty for 14 windows in their two dwellings, appealed to the Commissioners of Taxes. The following description of the nature of their occupation was given by the appellants: "Where we dwell was formerly occupied as one house; since a purchase of the house, with the land belonging to it, it has been divided into two tenements, which is about three years ago. *The house is divided by a passage that runs directly quite through the middle of it. There is only one door of entrance into the passage, where we have each a door, one to the right, the other to the left, into our dwellings, which are entirely distinct; have no sort of communication one with another, having two pair of stairs, &c.*; our rent is 2 *l.* 16 *s.* each, and in all parish rates we are rated, and pay distinctly, at 2 *l.* a year. The Commissioners determined that the appellants were liable to be charged for the windows *as one entire house.* The decision of the Judges is as follows: "We are of opinion that the determination of the Commissioners is wrong †.

H. Gould, W. H. Ashurst, G. Nares."

In the same work is the case of a Mr. Robson ‡. He was in possession of "a house or tenement, which adjoined close to another house or tenement, both belonging to one and the same landlord, and into which two houses there was an entrance from the street along a passage, about the middle of which there was a door on each side; one for himself to enter in at, to his own house or tenement, and the other for the occupier of the other house or tenement. The occupier of each house had a shop to the street, which communicated with his own house only; and each had a door to the street to enter into his shop at: these houses had separate and distinct staircases and yards, and had no communication with each

* Smee's Collection of Abstracts of Acts of Parliament, and Cases, with Opinions of the Judges upon the following Taxes, viz. upon Houses, Windows, &c., London, 1797.

† Smee, vol. 2, p. 413.

‡ Ibid, p. 391.

Evidence was then entered into with respect to the annual value of the premises. Two surveyors estimated the extreme value of the whole at 8 *l.* 7 *s.*, and one of them stated Casey's occupation alone to be worth 4 *l.* 19 *s.* 6 *d.* In the first of these valuations, Mr. Farrer, an Alderman of Ripon, who had been employed by the town in 1828 to make a valuation, with a view to the equalization of the county rates, and to the apportionment of the tithes, which had been sold by Mrs. Lawrence to the proprietors of land, agreed with the witnesses. Another surveyor estimated the yearly value of the whole premises at 8 *l.* 9 *s.*, and the annual cost of repairs at 14 *s.* 6 *d.* The situation was said to be one of the worst in the town.

On the other side two witnesses were examined. The first, a Mr. Williamson, the partner in Mr. Alderman Farrer's bank, whose father had possessed considerable property in the town, stated the premises to be well worth 10 *l.* or 10 *l.* 10 *s.* a year, the occupier paying all rates and taxes. The other, a surveyor to the Irish estates of Earl Fitzwilliam and to Earl Cowper's Leeds property, said he had been informed the property in question had let at 10 guineas five years ago, and stated his opinion that it was still amply worth the same sum.

The Committee decided that Casey's premises were of the annual value of 10 *l.*

Wm. Cundale's case.

The voter had stated to two persons in the months of

other, save only the said passage. Ever since Mr. Robson had been in possession of the house, the said two houses had been charged to the window-tax as one entire tenement; and for the land-tax and poor and parish rates, as two separate tenements; and the same had always been, and then were, distinguished and known as two houses or tenements." The Commissioners having, on an appeal, determined that the houses should be separately charged, and not as one tenement, the opinion of all the judges was, that the determination was right.

June and July last that he had no vote; that his aunt was the tenant. It appeared, in fact, that the aunt (Jane Cundale) was rated, but the owner of the house proved that he had let it to the voter in 1826. He stated, also, that he had ordered two receipts to be filled up at one time, with the dates of November 1831 and May 1832, to enable the voter to produce them if necessary. The occupation was not disputed, and the want of rating was not objected to. The Committee determined the vote to be good.

Declarations of a voter against his vote received in evidence.

The case of George Mangle was this. He was registered for a "House, North-street." From August 1831, to September last, the house, with the exception of a shop held by the voter, was occupied by Francis Mafham, as tenant, at a yearly rent of £4, he paying half the rates and taxes. In a room in the house the voter slept, Mafham having let him "half a bed," at 1 *s.* 6 *d.* per week; this room was furnished by Mafham. The voter dined in his shop, his dinner being cooked by Mafham's wife, who also washed his linen.

George Mangle's case. A lessee of a house and shop, who had let off the house to an undertenant, to whom he paid a weekly rent for the use of a bedroom, held, under the circumstances, to be in the legal occupation of the whole premises.

On one occasion, however, Mafham having put a bolt on a door leading from the shop into the passage, the voter sent him notice to quit, alleging that act as the ground for so doing.

Mr. Rogers insisted, that the voter here, having by his own act disunited the house from the shop, he could not unite them for the purpose of obtaining a vote. There was no inhabitancy attached to the shop, and the voter's personal residence in the house was in another character, that of tenant to Mafham.

Mr. Wood.—The argument on the other side would amount to this: that not a lodging-house keeper at Brighton or elsewhere could vote if he severed his occupation. Here, Mangle was the occupier in the eye of the law; he was answerable for the rent, and to the parish authorities for the rates. The notice to quit for an interference with the shop-door, proved that he re-

tained the control over the avenues to the shop. It was evident that Mafham's wife was housekeeper to the voter. To decide against the vote, would be to decide in direct contradiction to Casey's case, for Casey had no such control over his tenants as the voter here, who clearly had the run of the house.

The Committee resolved, "That George Mangle was in the legal occupation of the premises."

30th March. Mr. Rogers, on the following morning, informed the Committee, that, although prepared with evidence similar to that which he had adduced in Casey's case, with respect to 28 other votes, yet having observed the leaning of the Committee to be in favour of the franchise, he felt it his duty no longer to persist in the scrutiny, the continuance of which might subject the sitting members to expense, an object which the petitioners by no means desired, without having a reasonable prospect of ultimate success.

Mr. Serjeant Merewether, on behalf of the sitting members, acknowledged the obligation which they were under to the petitioners, for their very candid course of proceeding.

The Committee resolved, That the sitting members were duly elected; and that neither the petition nor the opposition to it were frivolous or vexatious.

The Committee also reported to the House that they had altered the poll taken at such election, by striking off George Snowden, as not having had any right to vote at such election.

CASE X.

TOWN OF SOUTHAMPTON.

The Committee was appointed on the 26th of March 1833, and consisted of the following Gentlemen:

Lord Robert Grosvenor, M. P. for Chester City, (*Chairman*).

R. Briggs, jun. Esq. M.P. for Halifax.

John Charles Ramsbottom, Esq. M. P. for Windsor.

Hedworth Lambton, Esq. M. P. for North Durham.

David Ricardo, Esq. M. P. for Stroud.

Patrick Maxwell Stewart, Esq. M. P. for Lancaster.

J. P. Plumptre, Esq. M. P. for East Kent.

The Hon. Craven Berkeley, M. P. for Cheltenham.

Lord Waterpark, M. P. for South Derbyshire.

James Talbot, jun. Esq. M. P. for Athlone.

Robert Biddulph, Esq. M. P. for Hereford.

Petitioners:—Electors in the interest of John Henry Penleaze, Esq.

Counsel for Petitioners:—Mr. Harrison, Mr. Follett and Mr. Austin.

Agents:—Messrs. Sharpe & Harrison.

Sitting Members:—Arthur Atherley and James Barlow Hoy, Esqrs.

Counsel for Mr. Hoy:—Mr. Serjeant Merewether, Mr. Rogers and Mr. Knapp.

Agents:—Messrs. Tilson, Squance & Tilson, and Mr. Whitchurch, Southampton.

THE petition in this case was of great length, and contained a variety of allegations; only two of them however were persisted in; of these, one was, that Petition.

"many of the votes given were by persons not entitled to vote, but who had assumed the name and character of other persons whose names were inserted in the register;" the other was, "that the name of Samuel Dawson, who was duly qualified to vote, and tendered his vote in favour of Mr. Penleaze, was inserted in one of the overseers' lists fixed on the church-doors, and not objected to, but through the negligence of the overseers it was omitted from the list presented to the revising barrister, and was consequently not inserted in the register in force at the election." It prayed the House to declare the return of Mr. Hoy void, and that Mr. Penleaze was duly elected, and ought to have been returned.

Objection taken to the proceeding with the petition on the ground of alterations having been made in it subsequently to its having been signed.

On the petition being read, Mr. Knapp submitted, that as the petition bore on the face of it marks of alteration, it was incumbent on the petitioners to show that they were not made after the signature of the petition.

Mr. Harrison admitted that these alterations had been made in London by the agent after the signature in Southampton, but with the full authority and knowledge of the petitioners, but he submitted that as he was ready to abandon all the charges that had been introduced by interlineation, he might proceed with the remainder of the petition.

Statement of the alterations in the petition.

The principal alterations were these: After a statement that "a poll was taken at the said election, on Tuesday the 11th, and Wednesday the 12th days of December now last past, and thence continued by adjournment to the Guildhall in the said town, to the 13th day of," there was an erasure; the words "the same month" followed, and then there was an interlineation of the words "of December." Another interlineation was "that the votes of several other persons were accepted and recorded in favor of the said James Barlow Hoy, although such persons were bribed to

give their votes at the said election." Another was, "that the names of several other persons were inserted as aforesaid, (*i. e.* in the register), who did not reside in the said town, or within the limits prescribed by the statute in such case made and provided, but whose votes were accepted and recorded in favor of the said James Barlow Hoy." There was also an interlineation of the word "money," in a charge of treating, as having been given by Mr. Hoy to persons to induce them to vote.

Mr. Knapp, for the sitting member:

Alterations such as these, apparent on the face of the petition, must be taken to vitiate the whole, and therefore the present petition cannot be received.

Held that additions made by an agent to a petition, after it had been signed by the petitioners, did not vitiate the remainder of the petition, and that the petitioners, having abandoned the charges introduced by such additions, might proceed upon the other charges.

It would be a very dangerous precedent if agents were to be held authorized to alter petitions after they had been signed by the parties. It would always be easy for agents to persuade petitioners to consent to any alterations they might make, because if they did not ratify them the petition must be abandoned; but the consequence would be that a sitting member would be exposed to all the vexatious charges any agent might think proper to introduce, and which, after providing himself at a considerable expense with evidence and witnesses to meet, he would find were never seriously intended to be persisted in, because there never had been any real foundation for them. Hardly any precedent could be found as to the conduct of Committees on cases of this description, because there were few persons so hardy as to tamper with the dignity of the House by thus altering its records. The only case in the Journals of a similar description with the present was that of a Committee on a Bill for the inclosure of the commons in the parish of Winfrith Newburgh (*a*),

(*a*) Journals, vol. 31, p. 558. This petition, which was against the bill, had been referred to the Committee, with an instruction to hear counsel on it; ibid, p. 539.

who discovered an erasure in the prayer of a petition which was referred to them. The course which that Committee pursued, was immediately to acquaint the House with the circumstance, in order to have their instructions in what manner they should proceed therein. The mode of proceeding adopted by the House was to appoint another Committee, to inquire by what means the petition came to be erased, and whether it was previous or subsequent to the signing thereof. No report of the determination of this Committee was to be found in the Journals (*b*); nor was it of any importance with regard to the present question. The only thing to be regarded was the conduct of the first Committee when they observed the alteration that had been made in the petition, which, it is worthy of notice, was not as here in the allegations supporting the petition, but in the prayer only. If this petition was to be considered as a deed or instrument, the effect of the alterations would be to render it void. In Pigot's case (*c*), it was resolved, " that when any deed was altered in a point material by the plaintiff himself, or by any stranger, without the privity of the obligee, be it by interlineation, addition, rasing, or by drawing a pen through a line, or through the midst of any material word, that the deed thereby becomes void; as if a bond is to be made to the sheriff for appearance, and in the bond the sheriff's name is omitted, and after the delivery thereof his name is interlined, either by the obligee or a stranger, without his privity, the deed is void. So if one make a

(*b*) It is probable that it found that the alterations were made after the signature, and that the petition was in consequence withdrawn, for a petition of precisely the same nature was presented to the House on the bringing up the Report of the Committee in favor of the Bill, (Journ. vol. 31, p. 572), and counsel were ordered to be heard upon it. It does not appear on the Journals whether they were heard or not, but the bill ultimately passed, and was sent up to the Lords. Journ. vol. 31, p. 582. See Hands on Election Petitions.

(c) 10 Rep. 27.

bond of 10 *l.*, and after the sealing of it another 10 *l.* is added, which makes it 20 *l.*, the deed is void. So if a bond is rased by which the first word cannot be seen, or if it is drawn with a pen and ink through the word, although the first word is legible, yet the deed is void, and shall never make an issue, whether it was in any of these cases altered by the obligee himself, or by a stranger without his privity. So if the obligee himself alters the deed by any of the said ways, although it is in words not material, yet the deed is void; but if a stranger without his privity alters the deed by any of the said ways in any point not material it shall not avoid the deed." Here obviously the alterations that had been made were most material; the petition now before the Committee was in fact no longer the petition that had been signed by the petitioners, and it only remained for the Committee to determine whether they would themselves consider it as void, or refer the matter to the House, as had been done by the Committee in the case of Winfrith Newburgh.

Mr. Harrison:

The cases that have been cited can have but little weight. It is not stated what was done by the Committee appointed to inquire into the alterations in the Winfrith Newburgh petition, and therefore no conclusion can be drawn from the proceedings upon it. Pigot's case has no application to the present, for there the question was as to the alteration not being made with the privity of the person to be affected by it; here no question of the kind arises, for the alterations were made with the full knowledge and consent of the petitioners. There is no doubt it was an irregularity to make such alterations, but still not such a one as would vitiate the whole petition. In the case of a petition some years ago against an inclosure bill, which was objected to because it was drawn generally against the

whole bill, and not against the particular parts of it by which the petitioners were aggrieved, Mr. Charles Calvert altered the petition openly, and after his alterations it was admitted as a petition against the parts of the bill to which his alterations had made it refer. That was the only precedent which had recently occurred, and it was precisely in point. The allegations which had been introduced in the present petition were entirely distinct from those originally contained in it. In fact, the petition had been originally drawn without an allegation of bribery, there having been some doubt as to the sufficiency of the evidence to establish agency, but subsequently additional evidence had been obtained on that head by the parties in the country, who were anxious, therefore, to have the allegation introduced, and sent directions to the London solicitor, requiring him to make the necessary alteration, which he, conceiving the directions to be a sufficient authority, accordingly did. We are however perfectly willing to give up all the allegations of bribery and treating, and also that which is directed against voters who resided more than seven miles from the town, and we submit that we ought to be permitted to proceed with the remainder of the petition.

The Chairman informed the counsel on both sides, "that in consequence of there being certain interlineations in the petition, admitted to be made subsequently to the signatures thereof, the Committee did not feel justified in proceeding to the examination of the merits without first taking the opinion of the House of Commons upon the subject of the interlineations."

The Chairman then proceeded to the House. Upon his return he stated, "that the Speaker had informed him that the House not being met for any other purpose but for the presentation of petitions, could not enter upon the discussion of a subject such as this, and that it would not therefore be possible to get the opinion of

the House upon it at that time" (*d*). He, (the Speaker) said the question was, whether, when a petition is sent up to London, the agent there had full power (whether he had authority or not) of adding or taking away from it, and whether, he having assumed to himself that power, the whole of the petition was thereby vitiated. The Committee then adjourned till the next day. On 29th March. that morning, the Chairman informed the parties that the Committee was in error in proposing to take the opinion of the House of Commons upon the objections raised by the counsel for the sitting member, that the Committee was a court constituted by Act of Parliament, and that the House of Commons could not interfere with any decision it might come to upon the subject. The Committee, after some deliberation, came to the following resolution: "That in taking into consideration the objections raised by the counsel for the sitting member, two points had suggested themselves to the consideration of the Committee; 1st, whether the additions complained of in the petition, and which were made subsequently to the signatures, had any effect upon the charges embodied in the petition; and 2dly, what effect they ought to have upon the remaining points. Upon the first point, as the counsel for the petitioners had abandoned the charges contained in the additions, the Committee did not think it necessary to pronounce any opinion. With regard to the second, the Committee had decided that the additions did not vitiate the remainder of the petition, and the counsel for

(*d*) In the *Galway case*, post. an adjournment having taken place on a Saturday in consequence of the illness of Colonel Davies, a member of the Committee, it would appear that a similar opinion had been expressed by the Speaker, for the Committee, though anxious to obtain leave to sit, at the 12 o'clock sitting on the Monday, did not sit until the following day.

the petitioners were at liberty to proceed with the other charges" (*e*).

The petition was then proceeded with in the form of a scrutiny.

The numbers at the close of the poll were, for Mr. Hoy, 604; for Mr. Penleaze, 594. The principal cases brought forward by the petitioners were of personations, and the chief difficulties in them were the identification of the parties.

Butt's case. It is no objection to the reception of a witness's evidence that he has subscribed to the expense of prosecuting the petition.

On a witness being produced on the part of the petitioners, he was asked on the *voir dire*, whether he had subscribed towards defraying the expense of prosecuting the petition. On his answering in the affirmative, Mr. Knapp objected that his testimony ought not to be received, as he was an interested party, who would be entitled to receive the overplus of his subscription in case it should not be all expended. The Committee over-ruled the objection without calling on the other side to reply to it, as they did also a similar objection which was taken in a subsequent case by Mr. Serjeant Merewether (*f*).

(*e*) Journals, vol. 74, pp. 377, 378. On the 30th of April 1819, a petition, complaining of the last election for the borough of *Camelford*, was delivered in and read, and the necessary allegation to entitle it to be received as an election petition being interlined in a different hand from that in which the rest of the petition was written: Ordered, that the said petition be withdrawn. A subsequent petition appears from the Journals to have been afterwards presented and prosecuted in this case.

(*f*) A similar objection was made in the *Coventry case* of this session, by Mr. Crowder, to receiving the evidence of a person who had subscribed towards defending the seat of the sitting members, and was overruled in the same manner without argument. Similar questions as to the admissibility of evidence have been raised in cases of wagers made on the result of an election. In the *Gloucestershire case*, p. 151, a witness, Wm. Moss, spoke to a wager made by him about the middle of the election; the terms of it were "that Mr. Chester would succeed." The witness said he looked upon it, that though Mr. Chester was returned by the sheriff he should lose

Pryce's case. In order to disprove the identity of the person who polled with the person whose name is on the register, evidence as to the manner in which the lists have been made out may be adduced.

In order to prove that the person who polled was not the person on the register, a witness was called who had been employed by the overseers in making out one of the lists. He was proceeding to state, that in copying the name from a list which had been given him, he had, by mistaking the heading of the list, written Henry Pryce, Cross-house, instead of Love-lane, and that Henry Pryce, of Love-lane, was the person intended. The person who had polled had described himself as Henry Pryce, Cross-house.

Mr. Serjeant Merewether objected to this evidence, as the Reform Act had directed the register to be conclusive upon all parties, and that the admission of evidence as to the method in which the lists were formed, would in fact tend to throw open the consideration of votes which had not been objected to before the barrister, in opposition to the late decisions of the *Petersfield*, *Oxford* and *Bedford* Committees. Mr. Austin replied that the evidence was not tendered with a view to impeach the correctness of the register, but only to show that the person who voted was not the person upon it. The Committee over-ruled the objection. Other evidence was then produced to show that no person of the name of Henry Pryce had either been rated in or been known to have lived at Cross-house,

his wager if Mr. Berkeley should succeed in his petition. The Committee determined that he was not a competent witness. In the case of Joseph Betts, who had made a wager *since* the election, which he had got another to take off his hands, the same Committee gave a similar decision; ibid p. 157. In the *Taunton case*, however, which is referred to in the *Gloucestershire case*, Bob Briant, who had made a wager of 100 *l.* "that Stratford and Webb would not be sitting members under that election," was examined, the Committee deciding that it affected his credibility only. The above extracts are taken from Mr. Hargrave's copy of the *Gloucestershire case*, deposited in the British Museum. In the *Sudbury case*, Philipps' Election Cases, 195, a person who had laid a wager on the event of a petition was held to be an admissible witness.

and the Committee ultimately determined that the Henry Pryce who voted was not the Henry Pryce who was registered, and that the vote ought to be struck off the poll.

Saunders's case. Evidence may be given of declarations of a person after he has voted, although they may tend to affect him with penal consequences.

On a question being asked of a witness as to what the voter had told him after he had voted,

Mr. Knapp objected to the question, on the ground that the objection made to this voter being that he had personated the person whose name was on the register, any declaration by him that he had done so would expose him to an indictment for a misdemeanor; and it was contrary to the practice of Committees to receive evidence of declarations that had such a tendency. He cited the resolutions in the *Leominster* (*g*) *case*, where, although the Committee determined that the declaration of a voter, which tends to destroy his own vote, is admissible, whether made before or after the election, yet they made a special exception, that it should not be received if it went to affect the voter with penal consequences.

Mr. Austin contended, that the general rule of Committees had been to receive all declarations of voters, whether made before or after their having polled, as in the *Bedfordshire* (*h*), *Cricklade* (*i*) and *Weymouth* (*k*) *cases*. Although there had been decisions in the *Middlesex* (*l*), *Nottingham* (*m*) and *Penryn* (*n*) *cases*, that declarations of the voter after he had polled should not be received; yet, as was observed by Mr. Rogers, in his Treatise on the Law and Practice of Election Committees, there was no reason for this distinction. There could be no specific exemption of the declarations of a voter on the ground of danger from criminal prosecution, as no evidence that was given before an election

(*g*) 2 Peck. 395.
(*h*) 2 Luders, 411.
(*i*) Ibid. in notis.
(*k*) 2 Peck. 227.
(*l*) 2 Peck. 141.
(*m*) Corb. & Dan. 203.
(*n*) Ibid. 63.

Committee could afterwards be used on an indictment in a court of law.

Mr. Knapp, in reply, relied on the general course of decisions having been against the admission of declarations made after the voter had given his vote, and urged that the ground of the exclusion of admissions of criminal acts was, not because the evidence given here might afterwards be used against the voter on a prosecution, but because it had a tendency to expose him to one, which was the reason that questions were never allowed to be asked of a witness in a court of justice which tended to make him criminate himself.

The Committee determined that the question might be put.

Hapgood's case. Declarations of a voter against his vote, after he has polled, are admissible in evidence.

Evidence was offered in this case of a declaration made by the voter against the validity of his vote soon after he had voted.

Mr. Serjeant Merewether objected to this evidence being received, on the ground that after the voter had polled, the candidate had acquired an interest in his vote, and that consequently his declarations against it were not admissible.

The Committee, however, expressed their opinion that they had by their former decision in Saunders's case over-ruled that objection.

Primmer's case. Declarations of a voter are not, however, admissible in evidence, which have been made after the Committee has been balloted for.

In this case evidence was tendered of the declarations of the voter against his vote on the day on which the Committee first met.

Merewether, Serjt.

This evidence ought not to be received. There was no instance where similar testimony had been admitted by any Committee, and the effect of its admission would be to convert the ante-room of the Committee into a canvassing-room. In fact, it would enable any voter to give his vote to both parties, to one at the poll, and to the other in the Committee-room, by declaring what he had already given to be invalid. The later cases of *Mid-*

dlesex, Penryn and *Nottingham* (*o*) had uniformly decided that declarations of a voter made after the election could not be received in evidence on account of the interest which the candidate in whose favor they were given had acquired in them, and although the Committee might not be disposed to go the whole length of those decisions, yet it was to be hoped that they would not admit of declarations which had been procured at so late a period as those in question.

Mr. Austin:

Committees had established no uniform rule upon the subject. This was shown by the decisions in the *Bedfordshire, Cricklade, Weymouth* and *Leominster cases* (*p*), in all of which declarations of voters under similar circumstances were received. When, therefore, the course of decisions was varied, the only method to arrive at a right conclusion was to inquire into the reasons on which the different decisions had been founded. Those which had been cited on the other side all proceeded on the principle that the candidate had acquired an interest in the vote, which ought not to be defeated by any subsequent declarations of the voter. But if the candidate had an interest, had not the public also? Was it not for the benefit of the public that the candidate should be returned who had the greatest number of *bonâ fide* votes in his favour? and was that public benefit to be defeated by any individual interest that another candidate might acquire in the vote of a man who probably had neither right nor title to give one? Mr. Rogers, in his treatise (*q*), had stated the true principle to be, that the interest of the public ought to be paramount to that of any individual, and that the duty of a Committee was not like that of a jury to try an issue between two

(*o*) *ubi supra.*
(*p*) *ubi supra.*
(*q*) Rogers' Law and Practice of Election Committees, p. 220.

parties, but to try the merits of the election. In a court of law the declarations of parties down to the very last moment before the trial was commenced were admissible in evidence, and in the *King* v. *Hardwick* (*r*), an admission of a person, who, although not technically on the record, was still in reality a party to the suit, was received. Committees had, in fact, gone still farther than was required of them in the present case; for in the second *Ilchester case* (*s*) they had taken the evidence of a voter himself against his own vote. Whether the Committee, therefore, were willing to proceed upon former parliamentary precedents, in analogy to the practice of courts of law, or according to the dictates of reason and common sense, it was hoped they would admit this evidence.

The Committee determined that they would not receive evidence of an admission made after the striking of the ballot.

A voter may be examined in order to prove that he had no right to vote.

Mr. Austin then proposed to call the voter himself to prove that he had no title to vote.

Mr. Rogers objected to this on the ground that it was in fact calling upon the man to declare himself guilty of a misdemeanor by personating another person, and that the same principle, that the candidate had acquired an interest in his vote, which had influenced the decisions in the *Middlesex case*, and might be presumed to have guided the last determination of this Committee in refusing to hear evidence of the declarations of a voter against his vote, must also lead them to refuse to hear the voter himself against it. The Committee determined, however, that the evidence was admissible (*t*).

(*r*) 11 East 578.

(*s*) 2 Peck. 251.

(*t*) In the *Great Grimsby case*, Minutes, 1831, it was held that the voter could not give evidence to defeat his own vote, nor that of his brother, a joint-tenant with him. The general rule of Committees has also been that a voter shall not be examined in support of his vote. In

The voter was then called in and examined, having been previously admonished by the Chairman that he might refuse to answer any question he thought proper (*u*); and other evidence having been brought forward to prove that he had voted in the name of another person, the Committee decided that his vote must be taken off the poll.

Dawson's case. A person whose name was in a list affixed by the overseers on the church-doors, but not in a list given by them to the barrister, or in the register, placed on the poll by the Committee.

The name of Samuel Dawson had been inserted in one of the lists made out by the overseers, and affixed to the church-doors, and no notice of objection to it had been delivered; it was, however, accidentally omitted from the list which the overseers produced to the revising barrister, and which was signed by him, and was consequently not inserted in the register. Dawson tendered his vote at the poll for Mr. Atherley and Mr. Penleaze; but the returning-officer refused to receive it, on the ground that his name was not on the register, and no entry was made of the tender on the poll-books. The fact of the tender was proved by a witness, after an objection that the poll-book was, since the passing of the Reform Act, the only proper evidence of a tender, had been taken by Mr. Knapp, and over-ruled.

Mr. Austin in support of the vote:

No laches can be imputed to the individual in this case. His name was in the list on the church-door, and no objection having been made to it, he of course concluded that the barrister would retain it on the list,

the *New Sarum case*, however, the Committee, under the circumstances, and having regard to the 52d section of the Reform Act, empowering the revising barrister to take the evidence of a claimant, determined to receive such evidence, but so far only as it could have been received before the barrister.

(*u*) In a court of law a witness has been permitted to prove that he had embezzled his master's money; *Clarke* v. *Shea*, Cowper, 197: and that he had been bribed at an election, although he had taken the bribery oath when he voted; *Bush* v. *Rawlins*, ibid. 199. The common case of the admission of the evidence of accomplices in criminal trials is also in favor of the decision of the Committee.

according to the provisions of the Reform Act. The error had arisen from the carelessness of the overseers, and never could have happened had the list affixed to the church-door been delivered to the barrister instead of a copy. It cannot, however, be disputed that Dawson's name ought to have been in the list submitted to the barrister; if it had been, the barrister was bound to retain it, it must necessarily have been placed on the register, and no one could have doubted his title to vote. The question now, therefore, for the Committee to decide, is, whether they will place him on the poll, or suffer him to be deprived of his rights by the errors of the overseers, over whom he had no control. The power of Committees to put on the poll all persons who had a right to vote, and tendered their votes, was undoubted, previously to the passing of the Reform Act. That Act has directed that the tenders of persons whose names have been omitted from the register in consequence of decisions of revising barristers, should be entered on the poll-book; and all the former Committees in this session have determined that they had no power to enter into the consideration of votes which had not been discussed before a barrister. It is not our intention to question the correctness of these decisions; all we contend for is, that they only extend to cases, which might have come under the barrister's cognizance. This case, however, never did or could have done so, for his jurisdiction is confined to cases which have been brought before him by claims or objections. No objection had been made to this voter, and no claim could have been put in by him, even if he had discovered the omission, for the time limited for putting in claims had expired long before it would have been necessary for him even to have thought of preferring one. This case must, therefore, be considered as one which has been unprovided for by the Reform Act; it is untouched by the decisions of every previous Com-

mittee; and there is nothing in the Reform Act to prevent this Committee from exercising their ancient right of placing on the poll the name of a man who was entitled to give, and had tendered his vote, and whom it would be a manifest injustice to suffer to be deprived of his rights on account of the misconduct of other persons.

Merewether, Serjt.

The only tenders which the 59th section of the Reform Act allows, are the tenders of persons "whose names have been omitted from any register of voters in consequence of the decision of the barrister who revised the lists from which such register shall have been formed." In this case, therefore, the tender was not of the class which the Reform Act directs to be entered on the poll-books, for the name was not omitted from the register in consequence of any decision by the barrister, and if the Committee shall decide that they will place the vote on the poll, they will act in direct opposition to the construction which has been put on the Act by all the returning-officers throughout the kingdom, who have universally considered themselves bound not to admit any tenders, except of persons who were not on the register in consequence of decisions by revising barristers. Indeed one of the main objects of the Legislature, that of preventing confusion at elections, would have been defeated, had an opposite construction been put on it; for any number of persons might have claimed to be placed on the books as tenders to the interruption of the legitimate voters, and disorder of the whole proceedings. The Committee has not, however, in truth, the power, under the Reform Act, of dealing with this case. That Act only authorizes parties before a Committee to impeach the correctness of the register, "by proving, that in consequence of the decision of the barrister who shall have revised the lists from which such register shall have been formed, the name of any person

who voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly omitted from such register" (*x*). The tenders evidently intended here are tenders by the same class of persons who are mentioned in the preceding section, that is, of persons who have been omitted from the register in consequence of a decision by a revising barrister. Unless, therefore, the Committee, in contravention of the decisions of the other Committees in this Session, take upon themselves to consider cases which have never been brought under the consideration of a revising barrister, they cannot place this vote upon the poll. The hardship upon the individual ought not to be suffered to outweigh in their estimation the consequences, that would result from breaking in upon a principle, and infringing upon the clear intention of an Act of Parliament. Whatever injury the party may have suffered, he may recover damages to the extent of it by an action against the overseer, and it must be recollected, that if he had attended before the barrister, his name would most probably, without any difficulty, have been placed upon the lists.

The Committee determined, that Samuel Dawson had a right to vote at the election, and ought to have been on the register, and must now be placed on the poll.

James Thomas Crouch's case. Where a person is placed on the register by a wrong Christian name, evidence may be brought forward to prove that he was the

In this case the objections which had been made on the part of the sitting member were, that he was not registered, and that the individual on the poll had personated another person. He was described on the poll as James Thomas Crouch, of Lower East-street, brewer. On the the register there was an entry of Crouch, Wm. James, house, East-street.

Mr. Rogers, against the vote, said he should content himself, in the first instance, with showing that there was no such name on the register as the name entered

(*x*) 2 Wm. 4, c. 45, sect. 60.

person intended to be registered.

on the poll; if, however, it should be attempted on the other side to show that the voter was intended to be registered, he would then show that he had no right to be on the register.

Mr. Follett contended that this was the case of a person who was described on the register by a wrong Christian name, and that the other side could not now take any objection to the right, not having previously objected before the revising barrister.

Mr. Rogers, in reply, insisted that the mistake of a Christian name was not a ground of objection before the revising barrister, who had the power of rectifying such mistakes under the Reform Act, without having it brought before him by an objector; besides, if the right Christian name had appeared on the register, and the person now claiming had been disclosed as the person seeking to be registered, an objection, no doubt, would have been made.

The Chaiman stated that what the Committee wished to determine was, whether the person who voted was the person intended to be placed upon the register; that the Committee had already gone into cases where mistakes had been made, which they had rectified, and what they wanted to know was, whether the Crouch who polled was the Crouch on the register or not.

Where there are several objections, one of which is, that the voter was not on the register, the parties objecting must bring forward the evidence on all of them together.

Mr. Follett then called witnesses, who proved that the voter had answered the questions and taken the oaths directed by the 58th section of the Reform Act, and that he was a brewer in East-street.

Mr. Rogers then proceeded to call witnesses.

Mr. Follett objected to this, on the ground that it was not competent for the counsel for the party who takes an objection to call further evidence after the party defending the vote had called theirs in support of it.

Mr. Rogers insisted that he had reserved to himself the right to call further evidence to answer that which

the other side might produce; but that the *primâ facie* case was sufficient in the first instance.

The Committee resolved that, in consequence of what Mr. Rogers had stated, they would allow him to proceed in this case, but in this case only, and that in future they trusted that all the evidence to establish their case would be stated, and then the counsel for the sitting member would have no further right to call evidence upon any other points subsequent to the defence.

Further evidence was then called against the vote. The determination of the Committee was, that the individual who voted as J. T. Crouch was the individual on the register, and it was accordingly declared to be a good vote.

Bowen Hall Draper's case.

A loss previously to the 31st of July of the qualification in respect of which the voter's name is entered on the register, is not a valid ground of objection before a Committee, unless previously taken before the barrister.

The objection to this voter was, that he had not the qualification for which he was registered at the time he polled. He was registered for a house in Castle-lane. It was proved that he left this house about the 18th or 19th of July, and went to live with his son in another part of the town as a lodger. He paid the rent and some of the rates for the house, till the next Michaelmas, although it remained unoccupied, and then he gave it up to the landlord.

Mr. Rogers:

The voter in this case had parted with the qualification for which his name was inserted in the lists, and afterwards in the register, and ought not therefore to have been permitted to vote. The Legislature has carefully guarded against persons in his situation being admitted to the poll by directing returning-officers, at the request of the candidates, to tender to all voters the question whether they possessed the qualification for which their names were originally inserted in the register, and by making the person who should give a false answer to it liable to an indictment for a misdemeanor. The form of the question, as given in the Act, directs

the officer to specify in each case the particulars of the qualification, as described in the register. The qualification of Draper, as given in the 2d column of the register, was "house," and the description in the 3d column was "Castle-hill"; the question, therefore, would have been, "Do you still possess the house on Castle-hill in respect of which your name was originally inserted in the register?" and if the voter did not answer in the affirmative (which he could not truly have done) he must have been excluded from voting. The framers of the Reform Act intended that every vote should be subjected to inquiry; if a vote be not objected to, it is to be considered as if it were admitted to be valid; if objected to, it is subjected to legal investigation, and judicially decided upon: but in this case the voter had no qualification at all at the election; at Michaelmas he gave up his house altogether, and therefore, for the purpose of voting, was a stranger to the borough. It is obvious, that it never could have been in the contemplation of Parliament, that a man should gain a vote by committing a misdemeanor. This point has, indeed, been expressly decided by the Bedford Committee in Harper's case (*y*), where the vote of a man, who had left the house for which he had been registered, was held invalid. But it may be contended, that because this voter was in the same condition, that he was on the 31st of July, and therefore might have been objected to before the barrister, he cannot, not having been objected to then, be objected to now; but if the register is conclusive for one purpose up to the 31st of July, it is so for all purposes; if the voter discontinued occupation previously to that day, he ought to have communicated that fact to the overseer, and to have had his name erased from the list; not to have done so was a fraud,

(*y*) *ante*, p. 142.

and he cannot now set up his own fraud in defence of his vote. He cannot say, he was not out of occupation on the 31st of July; and if he cannot, then as against him the objection is complete, for the disqualification must be presumed to have arisen since registration.

Mr. Follett:

Without entering into the general question, whether it was the intention of the Legislature that a change of residence should in any case occasion the forfeiture of a vote, it is clear that in the present case the disqualification had been incurred previously to the 31st of July. It was therefore in the power of any person to have objected before the barrister to the insertion of this name in the register; no person did object, and unless the Committee, in opposition to the Petersfield, Oxford and Bedford Committees, shall decide, that they will enter into the consideration of votes not questioned before the barrister, this vote must be allowed to continue on the poll. No argument has, however, been urged to induce the Committee to pursue a different course from what has hitherto been pursued throughout the Session; but the case of Harper has been cited in order to show that the Bedford Committee allowed the validity of an objection, on the score of loss of qualification since the registry. That case, however, widely differs from the present, because there the voter had left his house, not only after the 31st of July, but after the barristers had revised the list. Here, if the vote was bad, it was bad when the lists were made, and its validity cannot be disputed, unless every vote on the register is laid open to investigation.

The Committee resolved that the vote of B. H. Draper should be retained upon the poll (*z*).

(*z*) The Committee subsequently intimated that they had decided both this and the following case of Sherry upon the facts merely; that

James Sherry's case. The parting with the house in respect of which a voter is registered, after registration, is a valid objection.

This voter was described on the register as "Sherry, James, house, Above-bar-street;" on the poll as "James Sherry, Marland-place, Above-bar." The objection taken to him was, that he had not the qualification for which he was registered at the time that he voted. It was proved that he kept the Coach and Horses Inn, in Above-bar-street, at the time that the lists were made out, and that he took out the licence for it in October. Marland-place was about 300 yards distance from the Coach and Horses, and evidence was produced to prove, that he left the inn in the beginning of November, and that a family of the name of Quick had succeeded him, and had paid the Michaelmas rate. It appeared, however, that his name remained over the door.

Mr. Rogers contended that the evidence clearly proved that there was a change in the qualification after the time of registration, and at the election, and therefore that the case differed in that respect from the preceding one, and the party was not entitled to vote (*a*).

Mr. Foliett, in support of the vote, insisted, first, that supposing the Committee had the right to go into the question, the evidence adduced did not afford sufficient ground to come to the conclusion that the qualification had been changed; and secondly, that supposing the evidence to have established the fact, the Committee had no power to consider the question. The general policy of the Legislature in the Reform Act was, that the register should be conclusive. With this view, in whatever clause that Act conferred the right of voting, it also directed, that the person on whom it was conferred should only possess that right "if duly registered;"

they were of opinion, that a loss or change of qualification after the 31st of July destroyed the vote; and that, as to loss or change of qualification previous to the 31st of July, the question was undecided, and open for argument when it arose.

(*a*) See *Bedford cases*, *ante*, p. 148, Sturt's case.

and it contained further provisions as to the making out of lists, and the affixing them on the church doors (*b*), in order that every one might be able to judge of their correctness, and either to object to the retention upon them of persons not entitled, or himself to claim if improperly omitted from them; that the lists were afterwards to be submitted to the revising barrister, who was to decide upon all claims and objections that should be made respecting them (*c*); and that when so revised they were to be copied into a book, which was to be the register of electors (*d*) to vote at any election which might take place in the ensuing year. Having thus provided every reasonable precaution to ensure the accuracy of the register, its conclusiveness was secured by directing, that the only questions to be put at the poll should be, whether the voter was on the register, whether he had already voted, and whether he retained the qualification in respect of which he was registered (*e*). Thus the register was, by the Reform Act, rendered conclusive at the poll in all cases, except in those in which names had been omitted from it in consequence of the decision of the revising barrister; in those cases a special power of tendering their votes was given to the persons so omitted (*f*.) Another power was given to parties upon election petitions to impeach the correctness of the register, by proving that in consequence of the decision of the revising barrister, "the name of any person, who voted at such election, was improperly inserted or retained in such register, or the name of any person, who tendered his vote at such election, was improperly omitted from such register;" (*g*) and the Committee had the power of altering the poll accordingly. These, however, were the

(*b*) 2 Wm. 4, c. 45, sect. 44.
(*c*) Ibid. sect. 50.
(*d*) Ibid. sect. 34.
(*e*) Ibid. sect. 58.
(*f*) Ibid. sect. 59.
(*g*) Ibid. sect. 60.

only cases in which a Committee had the power of examining the register given to them by the Reform Act, and that general principle had been acknowledged by every Committee this Session. How then could this vote be disputed? It was not improperly inserted, in consequence of a decision of the barrister, in the lists, for it had been inserted by the overseers; it was not improperly retained in consequence of a decision by the barrister, for he was specially enjoined by the Act to retain on the list the names of all persons to whom no objections had been made, and none had been made against this voter; a Committee could not, therefore, have any power to inquire into it. But then it was said, that the voter could not answer in the affirmative the third question which the Reform Act allowed to be put as to the continuance of his qualification. It was true that if it was put, and he did not answer in the affirmative, the returning-officer might reject his vote, and if he answered it falsely, he might be indicted for a misdemeanor; but the point in dispute still remained as it was before. The Committee had no power given them by the Act to inquire, whether he answered it falsely or not; a court of law, no doubt, would have that power, and the Legislature contemplated, that the punishment which such a Court would most probably inflict, would act as a sufficient discouragement to prevent a frequent recurrence of false answers to this question.

The Chairman informed the parties that the Committee had thought fit to go into both the objections as to evidence and the legal point; and they had decided, in the first place, that James Sherry must be retained on the poll; and secondly, that they would go into evidence as to change of qualification between the barrister's decision and the poll; and he likewise stated that it was the opinion of the Committee that they ought not to go into evidence upon cases which had not been argued before the barrister, but that where objec-

tions to a qualification had been made previous to the registration, in such cases they would go into evidence in support of the objections, which had been so made, if the sitting member or the petitioners thought the decision of the barrister wrong.

The counsel for the sitting member, after this decision, requested a postponement until the next day, that they might arrange the order of their objections, which was granted them after a short discussion, and the following morning they abandoned their case.

The Committee then resolved, that Mr. Hoy was not duly returned; that Mr. Penleaze was duly elected, and ought to have been returned, and that neither the petition nor the opposition to it were frivolous or vexatious.

And the Committee, by a further resolution, informed the House that they had altered the poll taken at such election, by striking off the names of Wm. Butt, &c. (10 names), as not having any right to vote, and that they had added to the poll the name of Samuel Dawson.

CASE XI.

BOROUGH OF PORTARLINGTON.

The Committee was appointed on the 28th of March 1833, and consisted of the following Gentlemen:

J. Wemyss, Esq., M. P. for Fifeshire, *(Chairman.)*

Lord Viscount Grimston, M.P. for Herts.
Sir Wm. Molesworth, Bart., M. P. for East Cornwall.
Charles Stuart, Esq. M.P. for Buteshire.
John Ryle, Esq. M. P. for Macclesfield.
J. S. Poulter, Esq. M. P. for Shaftesbury.
Lord Viscount Milton, M.P. for North Northamptonshire.
The Hon. A. H. Moreton, M. P. for West Gloucestershire.
Sir R. B. W. Bulkeley, M. P. for Anglesey.
Thomas Chaplin, Esq. M. P. for Stamford.
J. H. Vivian, Esq. M.P. for Swansea.

Petitioner:—The Hon. George Lionel Dawson Damer.

Sitting Member:—Thomas Gladstone, Esq.

Counsel for the Petitioner:—Mr. Harrison and Mr. D. Pollock.

Agent:—Mr. Palmer, of Lincoln's-Inn Fields.

Counsel for the Sitting Member:—Mr. Serjeant Merewether, and Mr. Joy.

Agents:—Messrs. Freshfield.

An interlined petition allowed to be pro-

IN this case the Committee drew the attention of counsel to an interlineation in the petition, which it was then contended by Mr. Serjeant Merewether vitiated

the whole petition, the allegation introduced not being signed by the parties presenting it, (*a*) a condition required by the 9th Geo. 4, c. 22, in order to give the House, or the Committee jurisdiction over the subject matter of it. The authorities cited in the last case were then referred to.

ceeded with, the interlineation being abandoned.

Mr. Harrison, for the petitioner, abandoned the interlined allegation, which he said related only to the Catholic oath.

The Committee determined, that the petition should be proceeded with, excluding the interlineation.

Mr. Harrison then applied for an adjournment till after the Easter holidays, on the ground that the witnesses necessary to prove the poll had not arrived, in consequence, as he believed, of some impression that the case was to go over the Easter holidays. He mentioned the cases of *Haslemere* (*b*), *Cricklade* (*c*), *Nairn* (*d*),

An adjournment will not be permitted of a case not opened.

(*a*) The altering of the records of our courts of law has always been held a high offence since the time of Edw. 1, when Mr. Justice Ingham was fined 800 marks for altering the roll of a judgment; 3d Instit. 72; and it subsequently has been provided against by the statutes 8 Rich. 2, c. 4, and 52 Geo. 3, c. 143. In the late case of *Bailey* v. *Forbes*, 1 M'Clel & Younge, 462, the Court of Exchequer ordered an answer to be taken off the file, on the engrossment of which alterations appeared, and there was nothing to show that they had been made before it had been sworn to.

(*b*) 2 Dougl. 841. The application to the House in this case was founded on a statement of its being suited to the convenience of both parties, and of the Committee.

(*c*) 2 Luders, 386. The application for adjournment was made in consequence of a determination of the Committee as to the course of proceeding to be adopted by the petitioners.

(*d*) 3 Luders, 433. Here an objection had been made, that the petitioner relying on a trust deed in support of his case, ought to produce it. The Committee resolved to apply to the House for leave to adjourn, to give time for the production of the deed. No adjournment, however, took place, as the counsel for the sitting members made some admission respecting the deed, sufficient to allow of the case proceeding without it. In the case of *Forfar*, 1782, a similar resolution was passed.

Westmeath (*e*), *Dublin* (*f*), *Galway County* (*g*), and *Londonderry*, of this session, but admitted that he knew of no case, in which an adjournment had taken place, before the petition had been in any way entered upon. The petitioner was willing to pay all the expenses of the delay.

Mr. Serjeant Merewether was heard against the application.

The Committee resolved, That the case made by the petitioner was not sufficient to induce them to grant the delay asked for, and that the petitioner, being the party who asked for the inquiry, ought to have been ready with his witnesses.

Mr. Harrison.—The return is not indorsed according to the Act of Parliament, so that this case is the same as the *Londonderry*.

Mr. Serjeant Merewether said he admitted the return, and withdrew an application he had previously made for the costs connected with the interlineation.

The Committee resolved, That Thomas Gladstone,

(*e*) Minutes, 1827. An adjournment for two days was granted to allow time for the examination of the effect of the decisions of the Committee upon the votes, by reference to affidavits, registries, &c.

(*f*) Minutes, 1826. Here the adjournment was for five days, to allow the sitting member to procure the attendance of witnesses.

(*g*) Minutes, 1826. Two adjournments took place in this case, the first occasioned by the absconding of the sheriff, who had omitted to make the affidavit required by 1 Geo. 4, c. 11; the second for three days, to allow time for the arrival of witnesses. See *Oxford case*, ante, p. 101, where a short adjournment was allowed to procure the attendance of Jacobs, a poll-clerk. In the *Limerick case*, Corb. & Dan. 91, a similar application was refused. This case was stated by Mr. Harrison, in answer to a member of the Committee who referred to it, to have been long since over-ruled. In the *East Grinstead case*, (1803,) 58 Journ. 298, the illness of a material witness being proved on oath, and counsel on the other side consenting, the Committee adjourned from Friday to the Thursday following. In the *New Sarum case*, post. an adjournment was permitted for the same reason. In the *Carmarthen case*, (1803,) 58 Journ. 310, the counsel on both sides requesting an

Esq. was duly elected, and that neither the petition, nor the opposition to it, was frivolous or vexatious (*h*).

adjournment for the purpose of enabling them to make arrangements for facilitating the further progress of the business, the Committee adjourned from Friday to the Monday following. In the *Waterford case*, (1803,) 58 Journ. 589, the evidence and proceedings before Commissioners in Ireland being very voluminous, the Committee adjourned from the 7th of July to the 25th of August. In the *Downpatrick case*, (1808,) 63 Journ. 173, the sitting member's witnesses not having arrived, the Committee adjourned from the 15th March to the 23d of the same month.

(*h*) The following are among the cases to be found in the Minutes, of petitions not opened having been pronounced to be not frivolous or vexatious. *Ilchester*, 1819; *St. Ives*, 1819; *Hedon*, 1819; *Wootton Basset*, 1820; *Hedon*, 1826-27, where a material witness was stated to have died; *Camelford*, *Limerick County*, *Stockbridge*, *Sudbury*, and *Tregony*, all in 1826-27; *Oxford*, *Pontefract*, and *Stockbridge*, in 1831; the latter abandoned because by the Reform Bill the borough was to be disfranchised. In all the above cases previous notice had been given to the other side of an intention to abandon further proceedings. In the *Dover case*, Minutes, 9th March 1831, the petition was pronounced frivolous and vexatious, because no sufficient notice had been given to the returning-officer, who had, in consequence, been put to considerable expense.

CASE XII.

CITY OF NEW SARUM.

The Committee was appointed on the 30th of April 1833, and consisted of the following Gentlemen:

The Right Hon. Sir John Byng, Bart. M. P. for Poole, (*Chairman*).

T. H. Cookes, Esq. M. P. for East Worcestershire.
A. Bannerman, Esq. M. P. for Aberdeen.
Robert H. Hurst, Esq. M. P. for Horsham.
Lord Viscount Milton, M. P. for North Northamptonshire.
Sir William Ingilby, Bart. M.P. for Lincolnshire, parts of Lindsay, &c.
The Hon. Richard Watson, M. P. for Canterbury.
John Phillpotts, Esq. M. P. for Gloucester.
The Hon. Edward Mostyn, M. P. for Flintshire.
T. Fitzgerald, Esq. M. P. for Louth.
The Hon. Charles Compton Cavendish, M. P. for East Sussex.

Petitioner:—The Hon. Duncombe Pleydell Bouverie.
Sitting Members:—William Bird Brodie and Wadham Wyndham, Esqrs.
Counsel for the Petitioner:—Mr. Serjeant Ludlow, Mr. Serjeant Talfourd, and Mr. Stone.
Agent:— Mr. Houseman.
Counsel for Mr. Wyndham:—Mr. Harrison, Mr. Follett, Mr. Austin, and Mr. Slade.
Agent:—Mr. Cobb.

May 1st. THIS case was one of simple scrutiny. At the close of the poll Mr. Wyndham had a majority of three over the petitioner.

It appeared from the statement of Mr. Serjt. Ludlow in his opening, that the petitioner claimed to place on the poll the names of 16 persons, whose claims had been rejected by the revising barristers on the ground of informality, the local situation of their qualifications not being stated in the body of their notices of claim, and also those of other persons, against whose right to vote the barrister had decided upon the merits.

The first step in this, as in all other cases before Election Committees, being the proof of the poll, an application for adjournment, on the ground of the Mayor being attacked with the influenza, was made. A physician, Dr. Heckford, deposed, that it would be quite unsafe for the mayor to leave home that day, but that he might be enabled to attend on the following morning. The application for adjournment was granted (*a*).

The mayor, (Mr. John Beare), was this day examined. May 2d.
He produced the poll-books, and the lists revised by the barristers, and acted upon at the election (*b*), and stated that when votes were tendered he looked at the revised lists, and admitted as tenders those persons whose names appeared to be struck out in the list (*c*); that the tendered votes were entered in the poll-books by Mr. Lee, the clerk to the town-clerk of Salisbury, at his (the mayor's) dictation, from some papers he had brought with him from the polling-booths; and that he believed the names were checked after having been so entered. The witness sufficiently proved that the poll-books had remained unaltered since the election.

(*a*) See the cases of adjournment, ante, pp. 239, 240, notes (*b*) to (*g*).

(*b*) No objection was raised, either at the election or before the Committee, on the ground of the want of a register of voters, though the lists had not been copied into a book, according to the provisions of the 2d Will. 4, c. 45, sec. 54.

(*c*) According to this evidence, many persons might have been admitted to tender, who had in person abandoned their claims, or being objected to, had not appeared to support them.

James Smith's case. Where a notice of claim has been rejected by the barrister for informality, the merits may be discussed before a Committee.

Mr. Serjeant Ludlow then proposed to place on the petitioner's poll the name of James Smith, who appeared in the list for St. Martin's parish, as a tender for Captain Bouverie, in respect of a house in Exeter-street. In the list of claimants the name appeared to be struck out.

Mr. Harrison for the sitting member:

The counsel for the petitioner were about to call witnesses to prove the qualification of this party without producing his notice of claim. It was the clear undoubted law of Parliament, that he who sought to place himself on the poll should prove every thing necessary to establish his right. The first proof necessary under the Reform Act was, of due notice of claim. The person whose right was contended for, was placed in the same situation, as when before the barrister, and must, therefore, proceed in the same course to make out his right to be upon the register, in order to which he must begin, as if the Committee were sitting as the revising barrister, by producing his notice. The overseer's list was not a claim. The question which the Committee had to try under the 60th section was, whether the decision of the barrister was wrong? Three Committees had determined that jurisdiction was only given to them by the Act in cases where the barrister had decided. Here his decision was, that the notice was such as not to entitle the party to be heard.

Ludlow, Serjt., for the petitioner:

The real question to be tried was, whether the party, whose name was in the list of claimants upon the church-door, and also in the list before the barrister, was entitled to vote, for the barrister had nothing to do with the notices. The Act had confided to the overseer entirely and exclusively the duty of preparing the list, the law giving him credit for the honest discharge of that duty; but because the overseer might through inadvertence omit some names, it empowered any person omitted to make

a claim, and provisions were made for that purpose. A second list was directed to be prepared, and placed on the church-door. The duty of the barrister was, not to consider whether the overseers had acted correctly or otherwise, but to inquire and examine whether the objection, if any, to the claim, was valid or not (*d*). James Smith was now before the Committee in place of the barrister, and tendered proof of his qualification; the barrister had to discuss and decide upon the right, which it was submitted must now be done by the Committee.

Mr. Harrison in reply:

It had been said that the Committee had nothing to do with the notices. In answer to this it would be sufficient to state that they had become the subject of earnest discussion in three Committees. Here the barrister had held the claim to be such as not to give him jurisdiction, and had, therefore, not gone into the question of whether the party was entitled to vote or not.

In the *Bedford case* (*e*), though it appeared that a man was a freeman of the borough residing in London, the petitioners were prevented from objecting, because the notice was informal. In the *Ripon case* (*f*), it was held, that the barrister having entertained the question of right, the merits of the case might be gone into.

From the 45th and 50th sections of the Act it was evident that the overseer was the mere conduit-pipe of the claim, and had no right to mend the claim, as he had done in the case before the Committee.

The Committee resolved, That the counsel for the petitioner be allowed to enter upon proof of the qualification of James Smith.

(*d*) The Act does not provide for objections being made to names in the list of claims in boroughs.

(*e*) Flight's case, *ante*, p. 116.

(*f*) George Snowden's case, *ante*, p. 204.

Evidence was then given of Smith's occupation, as a tenant, of a house in Exeter-street, and of his being rated and having paid his rates. He was not liable to taxes, his house not being assessed.

Mr. Harrison here submitted, that the course of decision of Committees this session had been, that where the barrister had not decided on the right, the register must stand. The question was, would the Committee over-rule the previous decisions?

The Chairman. Our decision did not determine the vote, but the right to go into the examination of it. The next thing to be proved was, that the man came before the revising-barrister.

A witness (Mr. Houseman, the agent of the petitioner) was then called, who stated, that the question of informality, which applied to James Smith's case, was raised on the claim of Joseph Humby; that Humby's claim was discussed before both the barristers, and rejected by them for want of local description of the qualification in the body of the notice, and that when the decision was given, the witness had said he wished it to be understood that all the other cases were rejected on the same ground. Another witness then proved the tender by James Smith of his vote for Bouverie and Brodie.

Mr. Follett here referred the Committee to the entry in the poll-book, which contained a statement of a tender for Captain Bouverie only.

The overseer producing notices of claim must be sworn.

The notices of claim of James Smith and Joseph Humby were produced by the overseers of the parishes of St. Martin and St. Thomas, and proved by them on oath, the Committee, after a short argument, having decided, in opposition to Mr. Serjeant Ludlow, that it was necessary to swear the overseers (*g*). The notices were in the form prescribed by the Act, except that the

(*g*) *Davis* v. *Dale*, 1 M. & Malk. 514, a witness subpœnaed *duces tecum*, merely to produce papers, may put them in without being sworn.

qualification was in each case stated to be "a dwelling-house," without local description. They were signed respectively, "James Smith,"

place of abode, "Exeter-street."

and "Joseph Humby,"

place of abode, "High-street, Salisbury."

Mr. Slade suggested that the revising-barrister (Mr. Elliott), who was in Court, should be examined.

Mr. Serjeant Talfourd expressed his reluctance to call the revising-barrister, as it would be casting much additional inconvenience and responsibility on gentlemen who performed that duty, if they were to be subjected to examination as witnesses.

The Committee having intimated their wish that Mr. Elliott should be examined, that gentleman consented, and stated, that on reference to his notes, he found that the case of James Smith was decided on the same point as that of Humby. In other respects he corroborated the above evidence of Mr. Houseman.

Talfourd, Serjt., for the petitioner (*h*):

James Smith's case. Where a claimant had been rejected by the barrister in consequence of the omission of the local description of his qualification in the body of his notice, the Committee admitted the vote, after proof of qualification.

Here was the case of a person who substantially was entitled to vote, having resided the requisite time, having occupied a house of sufficient value, for which he had been rated, and the rates for which he had paid. What was the nature of the objection? His claim appeared properly described in the overseer's list: his name, qualification, and its situation, were there correctly stated. But it was said that he was not entitled to be placed on the list, because of an antecedent defect in title. The answer to the position so laid down would be twofold: first, assuming that the notice given was not strictly correct, yet if the overseer had found it sufficient, and had acted upon it, that fact would give the barrister

(*h*) Mr. Serjeant Talfourd commenced by expressing his thanks to Mr. Elliott for having consented to give evidence, and at the same time begged it might be understood, that it was not to operate as a precedent in any future case.

Mr. Elliott was not cross-examined.

jurisdiction. Lest, however, the Committee should be against him on the first point, he should contend, secondly, that the notice was good.

With respect to the first question, the object of the notice, as required by the Act, was to enable the overseer to make out the list of voters. If the party gave an insufficient notice, if his qualification were incorrectly given in, his vote was gone. The purpose of the notice was to enable a record to be made out, not to be a notice to all the world. If the list were made out correctly and fully, all that the Act required had been done. Notices of objection rested on a perfectly different ground: they were evidence of the title of the parties giving them to be heard as objectors, for no person, not clothing himself with that character in the manner prescribed by the Act, could oppose the right of his neighbour to be placed on the list. Where then was the analogy between a notice of objection and a notice of claim? Here all that the Act required had been done, the list had been made and posted on the church-door. The name then being on the list, *cadit quæstio*, for it was to be notice to the overseer, and he has clearly had it. If a claimant's name were not in the list of claims, then there would be some ground for strictness of construction.

The duty of the barrister was to revise the list, and that only. But let it be assumed that he had also to look into the notice, he would there find a claim for "a dwelling-house," signed "James Smith," with his place of abode stated to be "Exeter-street." The objection was, that the local situation of the house was not stated, but the place of abode only; if however the party had only one dwelling-house, and that in Exeter-street, he submitted that the locality was sufficiently stated. The Act did not require the form (*i*) to be

(*i*) Schedule I. No. 4.

strictly complied with, or it would not have contained the words "or to the like effect;" but if the provisions of the Act were imperative and not directory, the best possible reason existed in this case for contending that the notice was "to the like effect," for the effect contemplated by requiring the notice had been produced. In cases under the Annuity Act, where the law was most strictly enforced, if the directions of the Act were substantially complied with, such compliance had been held sufficient (*k*). The 79th section too had provided, that no inaccurate description in any notice should affect its validity.

Mr. Harrison for the sitting member:

The form in the Schedule I. No. 4, contemplated the probable case of a person residing in one house and voting in respect of another. From the form of the notice in evidence it was impossible to say that the terms had been complied with "to the like effect." The 79th section had been referred to; there was, however, no "inaccurate description" in the case before the Committee, but an entire omission; for the place of abode was required to be stated, in addition to the local description of the qualification, in order that it might appear that the claimant lived within the distance required by the Act. Here, for aught that appeared to the contrary, the house might have been any where, for it was not even stated to be in Salisbury. Overseers could not be permitted to alter claims, or they would correct in the case of a friend, and not in that of a political opponent. The overseer here had voted for the petitioner. The duty cast upon these persons was a mere ministerial duty, to copy the subject of claim, and in no way to alter it. The overseer, on the arrival of the barrister, was to give to him the lists, of which the barrister was to correct only one, in which he was to insert the names

(*k*) See *St. John* v. *Champneys*, 1 Bing. 77. *Phillips* v. *Const*, 3 Russ. 267.

of claimants whose right of voting should be proved to his satisfaction. With respect to claimants the ground on which the barrister proceeded was the notice. In many instances, doubtless, the barristers must have felt reluctance in deciding against the votes, but they did so because they were sensible of the importance of deciding, so that those who should succeed them might know how to act, and that overseers and claimants might be made sensible that they must abide by the regular, strict, and formal construction of the Reform Act. One object of the expensive machinery which had been created was to ascertain this construction by the decisions of the barrister, corrected as they would be in some instances by Committees of the House. Here it was the voter's own fault that he had not complied with the provisions of the Act.

May 3d. The cases on the Annuity Act had been referred to, as in favor of the vote, though not one had been cited. *Darwin* v. *Lincoln* (*l*), *Smith* v. *Pritchard* (*m*), and *Cheek* v. *Jefferies* (*n*) had decided, that, although the Annuity Act contains a direction that the memorial shall be "in the form or to the effect following," the form given in that Act must be strictly pursued in the statement of the places of abode of the witnesses. The result of all the cases, indeed, was, that where the Legislature had prescribed a form, and that form had not been complied with, the Courts had decided that individual hardship was not to be regarded, but that the form must be followed (*o*). In *Lovelace* v. *Currie* (*p*), reference was made to a case of *Taylor* v. *Fenwick*, (M. 23 Geo. 3, B. R.) where a notice of action given by an attorney who lived at D, and signed "given under my hand at D," was held insufficient under the 24th Geo. 2,

(*l*) 5 B. & A. 444.
(*m*) Ibid. 717.
(*n*) 2 B. & C. 1.
(*o*) See, however, the case of *Armitage* v. *Hemer*, 3 B. & Adol. 793, cited *ante*, p. 203, note (*d*).
(*p*) 7 T. R. 635, cited *ante*, p. 20.

c. 44, which required the place of abode of the attorney to be stated in the notice, the Court there being of opinion that residence at D was not to be inferred. So here because the claimant said he resided in Exeter-street, it was not to be inferred that his qualification to vote was situate there. In *Williams* v. *Burgess* (*q*), which was an action against a custom-house-officer for breaking open the plaintiff's house, and who of course could not fail to know who the person described in the notice was, the notice produced was dated the 29th of December, and expressed the plaintiff's intention to sue, "because the defendant had, on the 22d of November, broken open *the dwelling-house* and warehouse of Thomas Williams, in Cable-street, in the parish of St. George-in-the-East;" it was however held insufficient. Lawrence J. in his judgment, says "it can only be collected from the notice, and that but by inference, that the plaintiff's place of abode was in Cable-street on the 22d November." If inference had been in any case admissible it would have been allowed there. That case was therefore conclusive on the subject. The *King* v. *Sheard* (*r*), and the *King* v. *Justices of Oxfordshire* (*s*), were also authorities for the necessity of a strict adherence to the form of notices. The particular question before the Committee had never yet been decided; it should be regarded without reference to consequences to the voter, of whom, or of whose qualification, the Committee knew nothing. The decision, if given in favor of the sitting member, would have the effect of making parties know that they were bound to comply with the Act of Parliament, of informing overseers that they were only ministerial officers, and ought to publish the claims as made, and of supporting the decisions of revising-barristers, among whom upon this question there had been an almost complete uniformity of decision.

(*q*) 3 Taunt. 127.
(*r*) 2 B. & C. 856.
(*s*) 1 B. & C. 279.

Ludlow, Serjt., in reply:

The cases cited had no reference to the subject, relating as they did to the enrollment of annuities, to notices of action against magistrates, cases of affiliation, and questions of overseers' accounts. The authorities under the Annuity Act were explained by the object of the Legislature apparent on the Act, which was, that the place of residence of the witnesses should be stated, to enable the grantees readily to avail themselves of their testimony, for the purpose of setting aside fraudulent securities. The strictness of courts with regard to notices of action against magistrates, had been adopted with the view of discouraging vexatious proceedings.

The Committee unanimously determined, that the name of James Smith was improperly omitted from the register of voters for the city of New Sarum, and the Committee directed that the said register should be corrected by adding the name of the said James Smith thereto, and that his name be placed on the poll in favor of the petitioner.

Charles Taylor's case.

Mr. Serjeant Ludlow was in the course of contending that it would be a just and beneficial course, in cases where the barrister had decided against the claim on the ground of informality, without hearing the claimant's evidence of title, if the Committee should determine that the claimant ought to be considered as *ipso facto* on the register, the petitioner not having the opportunity of going into such evidence as was capable of being given at the registration, when he was stopped by the Chairman, who informed him that the Committee had decided "that they would abide by the same line they had pursued with regard to James Smith, and hoped the counsel would adopt that line of conduct which would meet it."

The vote was then withdrawn by the permission of the Committee.

The notice of claim of this party having been put in,

Mr. Serjeant Ludlow said he was about to call Humby as a witness.

Joseph Humby's case.

A claimant may be examined before a Committee in support of his vote, where he had presented himself at the barrister's court for examination.

Mr. Follett, for the sitting member:

It was the clear and established rule of Committees that a voter should not be permitted to give evidence for or against his vote (*t*). The Committee were here inquiring whether the person sought to be examined was entitled to vote. No one ever dreamt of calling the voter himself before the passing of the Reform Act, and there was nothing in that Act to make him a competent witness. The 75th section had preserved all usages in force respecting elections which were not repealed or altered by the Act. Before the Act the returning-officer examined the voter on oath as to his freehold. Committees then sat as courts of appeal from the decisions of the returning-officer, as they now did from those of the revising-barrister. In the *Bedford*, the *Ripon*, the *Southampton*, and *Longford* cases of this session, no such attempt as the present had been made. In the *Longford case* (*u*) nearly the whole scrutiny was occasioned by the oath of the voter sworn before the barrister being false.

Ludlow, Serjt. for the petitioner:

Conceded that according to the old practice it was not usual to examine the voter, though he never could understand on what ground the voter was to be considered as a party in the cause. The reason for preventing him from prejudicing either party by his mere declarations was more intelligible. The question proposed to be submitted to the Committee was, whether under the Reform Act it did not necessarily follow that Humby was entitled to prove his own vote? That question was answered the instant it had been conceded on the other side, that the Committee was sitting as

(*t*) *Great Grimsby case*, 1 Peck. 76; *Middlesex case*, 2 Peck. 134; and Harding's case, ibid; *Great Grimsby case*, Minutes, 1831.

(*u*) *Ante*, p. 176.

a court of appeal from the decision of the barrister. Was there any instance of an appellate jurisdiction, before which such an argument for the exclusion of evidence taken in the court appealed from had been urged with success? The question to be tried was simply this, was the barrister to adjudicate upon evidence which the Committee could not receive?

The Chairman here stopped the argument, by stating the impression of the Committee, that, as the 52d section of the Act authorized an oath to be administered to the claimant by the barrister, the claimant might be examined.

The claimant then proved his occupation as tenant, and payment of all rates prior to the 20th of July last; his residence for six calendar months previous to the election; and that his house was not assessed to the house and window duty.

The assistant-overseer in the claimant's parish proved, on inspecting the rate-book, that the rates were paid. He was rated for "a house and garden," though there was no garden attached to the house in question.

The Committee came to a resolution precisely similar to that in the case of James Smith, except that the vote of Joseph Humby was directed to be placed on the poll in favor of the petitioner and Mr. Brodie (*x*).

Isaac Young's and James Johnson's cases.

The votes of Isaac Young and James Johnson (*y*) were established on similar evidence, the overseers having been examined as to the rating, with this exception, that the Committee required other proof of the tender than the evidence of the voter (*z*), intimating at the same

A claimant cannot be examined as to a fact affecting his vote which could not have been investigated before the barrister.

(*x*) In this case, and in that of Noah Beale on a subsequent day, the Committee appear to have taken the poll-book as evidence. In the subsequent cases the tenders were proved *aliunde*.

(*y*) In James Johnson's case the claim was for "a house."

(*z*) In the first *Bedfordshire case*, 1 Lud. 392, the voter, Edward Bennet, was not admitted to prove a tender. In the second *Bedfordshire case*, 2 Lud. 406, the evidence of the voter, Thomas Ayres, was received. In the *Southwark case*, 2 Peck. 160, a voter was admitted to prove

time, in the first of these cases, their opinion that the voter could only be examined upon the principle of the 52d section, and consequently as to such facts only as could have been established before the revising-barrister.

The petitioner having established a majority, Mr. Harrison applied for and obtained an adjournment until the following day.

May 4th. Thomas Moody's case. A voter who had tendered his vote, and had given a qualified answer to the 3d question, and had been in consequence rejected by the returning officer, without the question having been again submitted to him, ordered to be placed on the poll, evidence having been adduced that no change of the qualification had taken place since the registry.

Mr. Slade opened this case. He stated it to be that of a voter on the register, unobjected to at the registration, who was sent to the mayor's booth to make the declaration, and take the oaths required by the Reform Act. When before the mayor, the voter having answered the two first questions provided for by the 58th section, was then asked whether he possessed the same qualification as at the time of the register, after some hesitation, he answered, "I should say, yes;" and then turning to Mr. Hodding, the town-clerk, who was also the voter's attorney, added, "what do you say, sir?" The town-clerk made no answer, and the mayor then said, "I reject the vote." The mayor subsequently administered the requisite oaths as to the two first questions. Mr. Hodding being then called in support of the case,

Mr. Serjeant Ludlow objected that the judgment of the returning-officer was conclusive upon the question of whether a satisfactory answer had been given by the voter, and therefore it was not within the compass of the present tribunal, which was, under the Act, only a court of appeal from the decision of the revising barrister.

The Committee, after hearing Mr. Harrison, over-ruled the objection.

Mr. Hodding was then examined, and established the facts stated above. In his cross-examination, he stated, that some time before Moody's vote came under dis-

a tender by him, but no objection was there raised against the evidence.

cussion, a voter came to the mayor's booth to have the questions put to him; that the man did not answer, and some whispering took place on the part of persons who accompanied him; that he then suggested to the mayor that he ought to take the answer yea or nay, from the voters; and that the mayor made a declaration, in the presence of the agents on both sides, that he would do so in all cases. The man's vote was allowed. The mayor, after rejecting Moody's vote, added, "I have said before I will have no equivocation." The circumstances which raised the doubt in Moody's mind were stated by Mr. Hodding to have been these: a suit for a dissolution of the partnership, as nurserymen, subsisting between Messrs. Geary and Moody (the voter) had been instituted, an ejectment had been brought, but further proceedings in it had been restrained by an injunction, and a receiver of the outstanding debts and a manager of the trade had been appointed by the Court of Chancery. The house and nursery-ground, in respect of which the vote was claimed, were part of the partnership property. On his re-examination, Mr. Hodding stated, that the manager was put in possession on the 4th of September last, but that neither he, nor the receiver resided on the property, which was occupied by Messrs. Geary and Moody precisely as it had been since 1799; that Mr. Moody lived in the house, was constantly there, and kept the key. The mayor did not repeat the question.

Mr. Harrison, for the sitting member:

There could be no doubt about this man's right to vote, it being clear that he was in possession of the qualification in respect of which he had been registered. The appointment of a manager did not destroy the tenancy of the house, nor divest that of the ground. All that had taken place was this; that in consequence of a quarrel between the two partners, a stranger had been appointed to manage their business. The answer

given by the voter was sufficient, and was not to be affected by his turning round to his solicitor, who, if he had felt his client was answering inconsistently with the facts, would not have improperly interfered if he had prevented him from voting.

Ludlow, Serjt. for the petitioner:

The question before the Committee was, whether the mayor was bound to take the answer given under the circumstances which were in evidence? It could not have appeared to the mayor that the party had the same qualification as he possessed, when registered. The evidence of Mr. Hodding had shown that there existed in the voter's mind a doubt as to the propriety of answering the question in the affirmative; the hesitation which had occurred was calculated to excite suspicion in the mind of the mayor, who had previously declared that he expected the answer to the question to be given without delay. What the voter had said was substantially this: "I am an honest man, and do not wish to give my vote under this change of circumstances. I cannot give an answer compounded of fact and law." He then looked to his solicitor, who gave him no assistance, and he was therefore relieved from the necessity of giving an answer. The question thus raised was one of the utmost importance; for if the returning-officer were not permitted to be the judge of the symptoms of equivocation evinced by the party, the whole object of the Legislature in protecting the poll, by preventing improper persons from getting on it, would be utterly frustrated. There was no single question on which the returning-officer might not be called before a Committee to answer for doubts in his mind, the existence of which would be incapable of proof before any tribunal. The advantages of a *vivâ voce* examination of the voter, possessed by the mayor, were lost to the Committee. Could the Committee say that the question was ever answered at

all? Substantially no answer had been given; for the question had not been repeated, the returning-officer being by no means bound to repeat it.

The Committee resolved, "That Thomas Moody ought to have been allowed to poll at the last election for New Sarum, and that his name should be added to the poll on behalf of the sitting member.

Joseph Burfoot's case. An objection, not shown to have been taken before the barrister, may not be raised before a Committee.

This was the case of a voter for the petitioner. The voter had occupied in succession two houses, for the last of which his landlord was rated. He had claimed for the house first occupied, and had been objected to before the barrister.

The evidence of the overseers of the parish was produced to prove the non-payment of some of the rates of the premises first occupied. For these premises he was rated as for a "garden;" but the amount of rate paid was inconsistent with that rating, being a 10 *l.* rate, and the garden being worth only 2 *l.* a year.

The Committee expressed their opinion, that it should first be proved what was contended before the barrister, without allowing Mr. Austin to argue that it was unnecessary to do so (*a*).

The assistant-overseer was then called, and stated, that some questions were put to him before the revising-barrister concerning the rates of Burfoot's house.

Mr. Serjt. Ludlow objected, that it being incumbent on the other side, to show what the decision of the barrister was, that decision could not be established by inquiries as to questions put on the subject of rating.

(*a*) The decision of the Committee, in this case, is directly opposed to that of the Ripon Committee in George Snowden's case, *ante*, p. 205. It would seem that, Burfoot having claimed, and being therefore bound to establish his right to vote to the satisfaction of the barrister (2 Wm. 4, c. 45, sect. 59), as on an appeal the barrister's decision must be taken, *primâ facie*, to be right, he ought to be presumed to have considered every question relating to the voter's qualification suggested by the provisions of the 27th section.

Mr. Austin here stated, that Mr. Oxnam, the barrister before whom Burfoot's claim was discussed, entertaining a doubt on the question of rating, had consulted his colleague, Mr. Elliott, and they had together agreed upon the decision to be given.

One revising barrister cannot be admitted to prove what was stated to him by his colleague on the subject of a case on which he had desired his advice.

Mr. Serjt. Ludlow submitted that the evidence of what Mr. Oxnam said to Mr. Elliott was inadmissible, as it came within the general rule as to hearsay evidence.

Mr. Austin:

The objection, that the evidence tendered was within the rule of hearsay, did not apply. He had wished to call a witness to state what the barrister said was a point before him. What evidence could be so good as a statement by the revising barrister himself? A witness before the barrister could only state, what took place before him, not what the grounds of the decision were. Unless the evidence offered were received, the Committee could only have the testimony of attornies, or, what would be still less valuable, of persons by no means conversant with the law administered by the revising barrister; for the barrister himself the party was not entitled to call. Here, the gentleman whose testimony was offered had been consulted as to the very point, and the judgment given was, in fact, the joint judgment of himself and his colleague. Such evidence was not only legitimate evidence, but the best which could be produced.

The Committee resolved, "That before the counsel for the sitting member proceed to give evidence of circumstances to affect this vote, they must show on what grounds the barrister decided, and the Committee was of opinion that primary evidence should be produced.

An application made by Mr. Austin, (who cited Westropp's case (*b*), that the further consideration of this case

(*b*) *Bedford, ante*, p. 147.

might be deferred, was refused, and the Committee decided that the vote of Joseph Burfoot do stand on the poll.

John Brown's case. No objection having been raised to the voter on the ground of rating and payment, he was presumed, under the circumstances, to occupy as tenant.

The voter had, since his marriage with the daughter of a Mrs. Larkham, two or three years ago, lived in a house called the Black-Horse Tap, which had been let to Mrs. Larkham at 40 *l.* a year, by one Payne, a maltster, with whom she dealt for malt. The rent was brought to Payne, sometimes by the voter, sometimes by Mrs. Larkham, and the payments were entered by Payne in a pass-book, which contained also his bills for malt. Mrs. Larkham had been, until March, or April, 1832, chambermaid at the Black-Horse Inn, where she slept while in the service of Mr. Rogers, the landlord, of whom she purchased the spirits sold at the tap. Mrs. Larkham was licensed, and her name was over the door, but had been placed there some considerable time after that of the voter. The voter constantly attended at the tap, served the customers, and received the money, except for a few weeks in the course of last summer, when he had been employed as a marker at a billiard-table at the Black-Horse Inn. An excise licence to Mrs. Larkham was put in, dated in October 1832.

Mr. Austin, for the sitting member:

Upon the facts of this case Mrs. Larkham, and not the voter, must be presumed the legal occupier. To her had been granted, for two years, the licence required by the Excise Acts (*c*). The Reform Act required the voter to occupy as owner or tenant; it was for the other side to show that the voter was the tenant, in opposition to the evidence of the regular payment of rent by Mrs. Larkham, to whom the house had been let (*d*). The

(*c*) 35 Geo. 3, c. 113, sect. 7; 48 Geo. 3, c 143, sect. 7.

(*d*) No interest in land can be surrendered, unless by legal notice in writing (Statute of Frauds, sect. 3), or by operation of law; *Thomas* v. *Cook*, 2 B. & A. 119; *Doe* v. *Johnston*, 1 M'Clal. & Y. 143, and cases there cited.

voter, in the very year in which he claimed as tenant, had been employed as a marker at a billiard-table, an office not consistent with his supposed character of landlord of an inn.

Ludlow, Serjt.

The question for consideration was, whether the barrister had wrongly decided that Brown was an occupier; for it must be taken to have been conceded that he was rated and had paid rates, these points not having been made subject of objection. In the *Milborne Port case* (*e*) the name in the rate was held to be conclusive evidence of occupancy; the reason being, that if the rate be not appealed against, the party was to be held liable to it. Here, in addition, was the fact, that the voter's name had been originally put up over the door, when Sarah Larkham was acting in the capacity of chambermaid at the inn, where she constantly slept. The earliest licence in evidence, as granted to her, was dated in October 1832. The strong and natural bias of the Committee, then, being in favor of the franchise, was there sufficient to lead them to the conclusion that Brown was not a joint occupier with his mother-in-law? If he were, that would entitle him to vote.

The Committee decided, that the vote of John Brown was a good vote.

William Morris and and James Turner's cases. A person with a wrong Christian name on the register may vote, if he states himself to be the person described in the register.

William Morris appeared on the register as "John" Morris. At the poll he said he was the person described, but that his name was "William."

The case of James Turner was stated to be precisely similar. Both had been rejected by the returning-officer.

The Committee ordered both votes to be placed on the poll; the former in favor of the sitting member, the latter in favor of the petitioner.

(*e*) 1 Dougl. 129.

John Percy's case. Evidence admitted of a tender not stated on the poll-book.

The voter was described in the register as "Benjamin Pearcy." A witness (Mr. Whitmarsh) was called, who said he remembered a person tendering his vote as John Percy.

Mr. Serjt. Ludlow objected that the poll-book was the best and only evidence of a tender, and referred to the established principle that "*quod patet per recordum*" cannot be falsified, a principle once carried so far as to have prevented a person, who was stated in a record to be dead, from denying the fact *ore tenus*, the answer being, "that he was dead upon the record."

Mr. Harrison:

The position that the poll was to be treated as a record was not founded in fact; for the mayor had shown how irregularly the tenders were entered; and a voter, James Smith, had been entered in the poll-book as a tender for Captain Bouverie only, though he had been proved to have tendered for Bouverie and Brodie: it was not founded in law; for suppose the mayor to have refused to enter the tender, there could be no doubt but that it might have been proved by other evidence, and where was the difference in principle between refusal, and such negligence as had here been proved? The voter's right to be on the poll, so far as qualification was concerned, was established; his name was on the register, and he had tendered. Nothing was more common, in cases of this kind, than to call the check-clerk or inspector to prove that the poll-clerk had not done his duty; *Southwark case* (*f*). The tender to the poll-clerk was the only tender that could legally be made (*g*). The want of entry by refusal or neglect could not conclude the voter.

(*f*) 2 Peck. 155; see note (A) ibid. 167.

(*g*) 25 Geo. 3, c. 84, sect. 7, and *Gloucestershire case*, pp. 32, 33, 34.

The Committee permitted the evidence to be gone into.

The witness was then recalled. He stated, that since he left the box he had seen the person who claimed to vote as Benjamin Pearcy in the register; that he was not allowed to poll, because his name was not "John" on the register; that when the poll-clerk refused to take the vote, Percy went to the mayor's booth. Another witness stated, that at the polling-booth, in answer to the first question asked of Percy, "Who do you vote for?" he heard him say, "For Wyndham—a plumper;" that when Percy came a second time, he saw Mr. Whitmarsh write down his name, and he believed Mr. Cooper (the other check-clerk) also did so. No evidence was given of what passed before the mayor.

Mr. Harrison then mentioned the *Harwich case* (*h*), in which it had been decided, that a tender might be proved even by circumstances, and proposed further to establish the fact of the tender by calling the voter.

The Committee decided, that the evidence of John Percy be not received, with respect to the tender of his own vote, and that they could not place Percy on the sitting member's poll.

Henry Cooper's case.

The voter had polled for the petitioner and Mr. Brodie. Mr. Brodie stated, that Cooper had been engaged by him as his agent at the election to canvass for him, and that he acted in that capacity. To the question "Did you pay him?" Mr. Serjt. Ludlow objected, that the witness was a Member of Parliament, and about to be examined as to the payment of some person who voted for him, and who, if there were any illegality in his voting, had done so by the honorable member's procurement. The 7 & 8 Geo. 4, c. 37, under which it was sought to disqualify the voter, contained this preamble: "Whereas it is expedient to make further regu-

A Member of Parliament who admitted that he had employed an agent for the purposes of his election, who had voted for

(*h*) 1 Peck. 396.

him, was held not to be bound to state whether he had paid such agent.

lations for preventing corrupt practices at elections of members to serve in Parliament, and for diminishing the expense of such elections." It could, therefore, scarcely be said, that Mr. Brodie was quite clear of illegality, and the principle of law was "*nemo tenetur prodere seipsum.*" Mr. Brodie was, therefore, not bound to criminate himself.

Mr. Austin:

Conceding that Mr. Brodie had been guilty of an illegal act, it by no means followed that he might not give evidence. Could any one doubt that the evidence of an accomplice might be received, although he was not bound to answer a question. So here it was for Mr. Brodie, and for him only, to make the objection. But in point of fact this was no misdemeanor; for the title and preamble of the 7 & 8 Geo. 4, c. 37, had for their principal object the diminishing of expense; and the enacting part of the first section provided only, that the agent or other person paid should be deemed incapable of voting, and that his vote, if given, should be void.

Mr. Brodie had the question repeated to him, and then submitted to the Committee, whether he was bound to answer? The Committee expressed their opinion that he was not. He then declined giving an answer.

Mr. Harrison applied for the adjournment of this case, upon which he had abstained from seeking for other evidence, in consequence of information he had received that Mr. Brodie had consented to be examined: he was himself perfectly satisfied there was nothing criminal in the payment of agents.

The Committee refused the application.

Mr. Harrison, on the part of the sitting member, then abandoned the seat.

The Committee resolved, "That Wadham Wyndham, Esq., was not duly elected a citizen to serve in Parliament for the city of New Sarum.

"That the petitioner was duly elected, and ought to have been returned.

"That neither the petition nor the opposition to it appeared to be frivolous or vexatious.

"That the Committee have also to inform the House, that they have altered the poll taken at the said election, by adding to it the names of James Smith, Joseph Humby, Isaac Young, James Johnson, Thomas Moody, Noah Beale (i), John Morris, and James Turner, as having had a right to vote at such election."

(i) In this case, evidence of the payment of subsequent rates to another overseer, and the oath of the voter that he had paid all rates due from him, were held sufficient proof that prior rates had been discharged, although the overseer, whose duty it was to collect such rates, swore that he had not received them.

CASE XIII.

BOROUGH OF MALLOW.

The Committee was appointed on the 23d of April 1833, and consisted of the following Gentlemen:

Lord Viscount Eastnor, M. P. for Reigate, (*Chairman.*)

Lord Robert Grosvenor, M.P. for Chester.
S. L. Fox, Esq. M. P. for Helleston.
Edward Dawson, Esq. M. P. for South Leicestershire.
William Blamire, Esq. M. P. for East Cumberland.
Sir John Eardley Wilmot, Bart., M. P. for North Warwickshire.
Edward Divett, Esq. M. P. for Exeter.
William Evans, Esq. M. P. for Leicester.
Edward Thomas Bainbridge, Esq. M. P. for Taunton.
Lord Tullamore, M. P. for Penryn, &c.
Henry Halford, Esq. M. P. for South Leicestershire.

Petitioners:—Electors.
Sitting Member:—William Joseph O'Neill Daunt, Esq.
Counsel for the Petitioners:—Mr. Harrison and Mr. Thesiger.
Agents:—Messrs. Fladgate, Young and Jackson.

THE petition in this case, after stating that Charles Denham Orlando Jephson, and William Joseph O'Neill Daunt, Esqrs. were candidates at the last election for the borough of Mallow, contained among other allegations the two following: that the returning-officer received the votes of many persons tendered for the sitting member, whose alleged right to vote at the said election was derived from lands or tenements situate without the boundaries of the said borough, as settled by the 2 & 3 Will. 4. c. 89, and whose votes ought to have been

rejected. "That the said William Joseph O'Neill Daunt has not now, nor had he at the time of the election, or at any time since, such an estate in law or equity, and of such value, to and for his own use and benefit, of or in lands, tenements or hereditaments, over and above what will clear all incumbrances that may affect the same, as qualifies him to be elected and returned to serve in Parliament for the said borough of Mallow."

It prayed that the House would cause the names of such voters as were not legally entitled to vote at the said election to be struck off by a Committee of the House, and that the House would be pleased to declare the said Charles Denham Orlando Jephson to have been duly elected, and that he ought to have been returned as member to serve in Parliament for the said borough.

At the close of the poll the sitting member had a majority of 10 over Mr. Jephson.

The sitting member did not appear by counsel, and had given no previous notice to the petitioners or their agents, that he did not intend to defend his seat (*a*).

The election of a member, who had not given the usual notice that he did not intend to defend his seat, and who had stated in the particular of his qualification certain property which appeared to belong to another individual, and who had polled at the election the votes of many persons whose freeholds notoriously were without.

It appeared from the evidence, that the Kilternan or Glencullen estate, in respect of which the sitting member had qualified, was the property of Christopher Fitz-simon, Esq., and that searches had been made in the register at Dublin, under the name of Fitz-simon from 1768 to 16th April 1833, under the name of the estate Kilternan from 1787 to 16th April 1833, and under that of Glencullen from 1807 to the 16th of April 1833, without finding any registered conveyance. One of Mr. Fitz-simon's tenants, who was examined, had never heard of Mr. Daunt's name as connected with the property, during the period of the last 30 years.

The counsel for the petitioners then proceeded to

(*a*) This was expressly proved at the request of a member of the Committee.

the boundary of the borough, declared to be vexatious.

disqualify a sufficient number of voters for the sitting member to establish a majority in favor of Mr. Jephson, by showing that their property lay 200 or 300 yards beyond the known boundary of the borough.

They then submitted, that under the 40th & 59th sections of the 9th Geo. 4, c. 22, the case was one which entitled their clients to costs, the sitting member having stated a qualification which he did not possess, and having polled votes well known to be bad.

The Committee resolved, That William Joseph O'Neill Daunt, Esq. was not duly elected a burgess to serve in this present Parliament for the borough of Mallow, and ought not to have been returned.

That Charles Denham Orlando Jephson, Esq. was duly elected, and ought to have been returned.

That the petition was not frivolous or vexatious.

That the election of the said William Joseph O'Neill Daunt, Esq. does appear to the Committee to have been vexatious (*b*).

That the Committee have also to inform the House that they have altered the poll taken at such election by striking off James Connell, &c. (18 names), as not having had any right to vote at such election.

(*b*) In the *Flintshire case*, 1 Peck. 528, the minority of the sitting member was well known at the election. He did not defend his seat. The Committee reported the return to be vexatious, but not corrupt. The 59th section provides, that the petitioners shall be entitled in such a case as the above to receive from the sitting member, or from the persons admitted parties to oppose the petition, the full costs and expenses which such petitioners shall have incurred in prosecuting their petition. The 60th, 61st, and 62d sections provide for the mode of ascertaining, and taxing the costs, and the 63d section enacts, that on any action for the recovery of such costs, the Speaker's certificate shall have the effect of a warrant to confess judgment.

CASE XIV.

BOROUGH OF TIVERTON.

The Committee was appointed on the 10th of May 1833, and consisted of the following Gentlemen:

The Right Hon. J. Abercromby, M. P. for Edinburgh, *(Chairman.)*

Sir Thomas Fremantle Bart., M. P. for Buckingham.
Thomas Greene, Esq. M. P. for Lancaster.
The Right Hon. Thomas Frankland Lewis, Esq. M. P. for Radnorshire.
The Right Hon. Charles Tennyson, M. P. for Lambeth.
Richard Bethell, Esq. M. P. for E. R. Yorkshire.
Sir R. A. Ferguson, Bart. M. P. for Londonderry.
Benjamin Hawes, jun. Esq. M. P. for Lambeth.
Benjamin Lester Lester, Esq. M. P. for Poole.
Sir John Wrottesley, Bart., M. P. for South Staffordshire.
Stewart Majoribanks, Esq. M. P. for Hythe.

Petitioners:—Electors.
Sitting Members:—John Heathcote & James Kennedy, Esqrs.
Counsel for the Petitioners:—Mr. Follett and Mr. Austin.
Agents:—Messrs. Fyson & Beck.

THE petition in this case alleged—that Mr. Kennedy, one of the sitting members, had taken the qualification oath at the election; that the registers of the counties of Middlesex and York, and the registers of

electors or of persons entitled to vote in the election of members to serve in Parliament for the same counties, had been searched, and that the petitioners had not only been unable to discover by any of the means aforesaid, that the said James Kennedy has, or at the time of the last election for the borough of Tiverton had, any estate whatever in any lands, tenements or hereditaments within any or either of the parishes, townships or precincts of St. Andrew's, Holborn, and the Holy Trinity, in the town of Kingston-upon-Hull, where he had described the subject of his qualification to be situate; but on the contrary, they had been informed and believed that the said James Kennedy had not actually and *bonâ fide* any such estate within the said parishes, townships or precincts, or either of them, or elsewhere, as would qualify him to represent the said borough of Tiverton in Parliament.

The petition prayed that the election and return of Mr. Kennedy might be declared void.

The ballot being originally appointed for the 28th of February, the sitting member, on the 21st of that month, the last day for so doing, addressed the usual letter to the Speaker, declaring it to be his intention not to defend his seat (*a*). The order for the consideration of the petition was in consequence discharged (*b*), and the petition was appointed to be taken into consideration on the 9th of May.

The sitting member did not appear by counsel.

Evidence was adduced to show that the sitting member must have been aware at the election that his qualification was insufficient.

The Committee resolved, That James Kennedy, Esq. was not duly elected.

That the last election for burgesses for the borough

(*a*) 9 Geo. 4, c. 22, s. 11. (*b*) 9 Geo. 4, c. 22 s. 12.

of Tiverton, so far as regarded the said James Kennedy, was a void election.

That the petition did not appear to be frivolous or vexatious.

That the election of the said James Kennedy did appear to be vexatious (*c*).

(*c*) It is very questionable whether costs can be recovered in such a case as the above, the 59th section, which provides, that where no party opposing the petition shall appear before the Committee, the petitioners shall be entitled to recover their costs from the sitting member, containing the following qualification, (such sitting member not having given notice as aforesaid of his intention not to defend the same.)

CASE XV.

LONDONDERRY CITY.

The Committee was appointed on the 22d of March 1833, and consisted of the following Gentlemen:

Henry Warburton, Esq., M. P. for Bridport, (*Chairman*).

Wm. Fielden, Esq. M.P. for Oldham.
James Mangles, Esq. M.P. for Guildford.
Lewis Weston Dilwyn, Esq. M.P. for Glamorganshire.
Henry Winston Barron, Esq. M.P. for Waterford City.
Wm. Downe Gillon, Esq. M.P. for Linlithgow district of burghs.
Andrew Johnston, junr. Esq. M.P. for Cupar district of burghs.
Thomas Gisborne, Esq. M.P. for North Derbyshire.
George Sinclair, Esq. M.P. for Caithnesshire.
John Bowes, Esq. M.P. for South Durham County.
John Young, Esq. M.P. for Cavan County.

Petitioners:—Electors.
Sitting Member:—Sir Robert Alexander Ferguson, Bart.
Counsel for the Petitioners:—Mr. Harrison, Mr. Follett and Mr. Austin.
Agents:—Messrs. Sherwood & Thorpe.
Counsel for the Sitting Member:—The Hon. Mr. Law, Mr. Joy, Mr. Pollock and Mr. Alexander.
Agents:—Messrs. Walker, Grant & Pugh.

THE petition in this case proceeded wholly on charges of bribery by the sitting member, and prayed that the return might be declared void. At the opening of the

case a preliminary point was raised by the counsel for the sitting member, that it was necessary to prove the election by producing the poll, for which purpose they cited the cases of *Newcastle-under-Lyne* (*a*), and *Dungarvon* (*b*), and that the certificate by the returning-officer of the names of the candidates, and the numbers who voted for each candidate at the final close of the poll, directed by the 1st Geo. 4, c. 11, s. 4 (*c*), to be indorsed on the back of the return, did not do away with the old and established rule of election committees on the subject. This objection was, however, waived, after a short argument. The writ and return were then put in from the Crown-office. On the back of the writ was an indorsement in the following form:

An account of the number of electors who polled for each candidate at an election for an Irish county of a city, which was indorsed on the back of a return, but not in the handwriting of or signed by the returning-officer, held not to be a valid certificate to dispense with the production of the poll.

Gross poll for Sir Robert A. Ferguson -	308
Gross poll for the Right Hon. George Robert Dawson - - - - -	226
Majority for Sir Robert A. Ferguson -	82

A witness was then called, who proved the signature of the mayor, (who was the returning-officer), to the return, and said that he believed the mayor was in the room at the time that this indorsement, which was intended for a certificate under the statute, was made by his clerk, who usually transacted all the business of the mayor's office.

Mr. Follett, for the petitioners,

Contended that this must be taken as a good certificate of the returning-officer. There was nothing in the

(*a*) 1 Peck. 489.

(*b*) 1 Roe on Elections, 711.

(*c*) There is a similar provision as to certificates of returning-officers for counties of cities and counties of towns in Ireland in 4 Geo. 4, c. 55, s. 71, which repeals the 1st Geo. 4, c. 11, s. 4, as far as relates to this kind of county. It appeared in the course of the proceedings that Londonderry was a county of a city, but the references were all made to the 1st Geo. 4.

statute which required him to sign the certificate. In fact he had signed the return, which was on the other side of the same parchment, and they must both be taken together as one document. They had been returned to the Crown-office, and now coming as a record from the custody of the proper officers, this certificate ought to be presumed to be valid. The general rule of Committees of late had been, to endeavour to get at the merits of the petition which they were sworn to try, and not to suffer themselves to be stopped from arriving at them by technical objections. The late decision of the Montgomery Committee was a strong precedent to show the unwillingness of a Committee to to be fettered by too great an attention to technicalities.

Mr. Pollock, for the sitting member:

An indorsement in the writing of another person can never be considered as a certificate by a returning-officer. Supposing an indictment to be preferred against the mayor for a false certificate, would any court admit this to be a certificate by him, when not a word of it is in his own handwriting The probability, indeed, is, that it was written by the mayor's clerk after he had left the room, or he would have signed it as he had signed the return.

The Committee came to two resolutions; First, That the indorsement on the back of the return for the city of Londonderry, produced before them by the clerk of the Crown-office, without further evidence of its authenticity, was no certificate of the names of the candidates, and of the numbers who voted for each candidate, as it appeared at the final close of the poll, according to the provisions of the 1st Geo. 4, c. 11.

Secondly, That the counsel and agents be called in; and that the Chairman should be directed to read to them the foregoing resolution, and to inquire of the

petitioners, whether they were prepared to produce the poll-books?

Mr. Harrison stated, that he was not prepared to produce the poll-books.

Time given to petitioners to produce the poll-books, they having not brought them from Ireland in consequence of their having relied on the returning-officer's certificate, which proved to be informal.

The Committee then stated, that they wished to hear one counsel on each side upon the following questions, First, Whether such time should be given to the petitioners as might be necessary to enable them to produce the poll-books? and, secondly, Whether, in default of the production of the poll-books, the Committee ought to admit further evidence to prove the authenticity of the certificate?

Mr. Harrison:

On the first point submitted that, with the exception of the decisions in the *Limerick* (*d*), and *Newcastle-under-Lyne* (*e*) cases, which he contended had been overruled by the later decisions, Committees had always been in the habit of granting a reasonable indulgence to parties to produce evidence, which had become necessary in the course of the investigation, from causes of which they could not previously be aware, and he cited the same cases as he alluded to in the *Portarlington case* (*f*). Here the petitioners naturally concluded that the returning-officer would return a correct certificate. They ought not, therefore, to suffer for his default, especially as they were willing to defray any expense the petitioners might be put to by the delay. On the second point he hoped that the Committee would receive any further evidence to authenticate the certificate the petitioners might be able to procure, should they be unable to produce the poll.

Mr. Pollock

Relied upon the decisions in the cases of *Limerick* and *Newcastle-under-Lyne*, and argued that the petitioners might have examined the return and cer-

(*d*) Corb. & Dan. 91.
(*e*) 1 Peck. 489.
(*f*) See the notes to that case, *ante*, pp. 239, 240.

tificate at the Crown-office, and ought to be held accountable for their own laches.

The Committee determined, that as it would be unjust to make the petitioners finally responsible for any informality in an official document over which they had no control, the Committee on its rising would adjourn from day to day, or for such other period as the House might sanction, to such time as might be necessary to enable the petitioners to produce the poll-books, or in default of the production of the poll-books, will admit further evidence to prove the authenticity of the indorsement. Mr. Pollock having again, upon an application by the Committee, refused to waive his objection, Mr. Harrison requested that the agents of the petitioners might be furnished with a list of the witnesses for whose expenses the agents for the sitting member intended to apply. On the 26th of March, the House, on the application of the Chairman, granted leave to this Committee to adjourn to the 30th.

30th March. The poll-books were produced on this day by the joint town-clerks and clerks of the peace of the city, the office being a joint one in Londonderry. On opening, however, the parcel in which they were enclosed, no affidavit was found from the returning-officer to certify that they were the original poll-books, as required by 1 Geo. 4, c. 11, s. 3 (*g*). This defect was, however, cured by the petitioners producing the returning-officer, who gave testimony to the effect required by the statute before the Committee, and the books were accordingly received in evidence.

Declarations of Petitioners against the character of their own witnesses, may be

The case of the petitioners was principally founded on the testimony of a person of the name of Horner and his family, who deposed to an act of bribery on the part of the sitting member in person. Other witnesses were also called, to whom the Committee did not

(*g*) And also by the 4 Geo. 4, c. 55, s. 76.

appear to attach much credit. In the course of the proceedings, some evidence of acts of treating by a club called the "Independent Club (*h*)," which was opposed to the sitting member, was given. After the case for the petitioners was closed, the counsel for the sitting member called a witness, who contradicted in several particulars the evidence of Horner and his family, and they then proposed to prove declarations by one of the petitioners himself, as to the nature of Horner's character. To this the counsel for the petitioners objected.

given in evidence without calling the petitioners themselves.

Mr. Follett, in support of the objection:

Evidence of declarations by persons who may themselves be called as witnesses is never received in any court. If the other side wish to have the opinion of the petitioners as to Mr. Horner's character, they may call them. A special power is given to Committees, by the 39th section of the 9th Geo. 4, c. 22, in the same terms as it had been previously given them by the 19th section of the 53 Geo. 3, c. 71. This power has been exercised in the *Rochester* (*i*) and *Bridport* (*k*) cases, in both of which, the Committees determined the true construction of these clauses to be, that the counsel for the sitting member might call the petitioners, but their own counsel could not.

Mr. Law:

Although the Acts, that have been referred to, enable us to call the petitioners as witnesses, there is nothing in them to oblige us to do so; and if we did, and they

(*h*) Printed Minutes, pp. 29, 41, 43, 61, 65, 71, 74, 76.

(*i*) In the *Rochester case*, the petitioners were examined, after some discussion, as to facts in which they were not interested.

(*k*) Minutes, 1820; in that case the petitioners were examined to prove that the candidate, Colonel St. Paul, was the real petitioner, for the sake of giving recriminating evidence against Colonel St. Paul.

should choose to deny what they formerly asserted, another question would arise, whether we could call fresh evidence to contradict our own witnesses. These declarations are admissible, on the general ground of being an admission of a party against his own interest. The petitioners' interest is certainly that the petition should be successful, at any rate that it should not be declared frivolous and vexatious, which it is probable it will be, if it is shown that they have attempted to support it by the testimony of persons whom they themselves knew to be unworthy of credit. It is not unusual in criminal courts to put witnesses into the box, to prove that the prosecutor knew that the witnesses he brought forward were hired bail, or of an equally disreputable description.

Mr. Follett, in reply:

In the case last put, the regular course would be to call the prosecutor, and ask him whether he ever made the declarations intended to be proved, and if he denied them, to produce evidence to contradict him. The rule of not admitting the declarations of persons who may themselves be brought forward is constantly resorted to in practice; thus the declarations of rated inhabitants against their parish, which used to be received formerly, never are now, since the Act which has rendered them competent witnesses in cases of rating.

The Committee determined that the counsel might proceed with their examination.

Mr. Follett, on the part of the petitioners, subsequently withdrew from the further prosecution of the case.

April 30th. The ultimate determination of the Committee was that Sir R. A. Ferguson, Bart., was duly elected, and that the petition was frivolous and vexatious.

They also passed additional resolutions, that it appeared that an extensive system of treating, coupled

with other corrupt practices, was carried on and promoted, previously to and during the late election for the city of Londonderry, by the members of a certain society called the "Independent Club," most of whom were electors of the said city, and nearly one third publicans; that the said club was opposed to the interests of the sitting member, who was in no way implicated in the practices of the club.

That it appeared to this Committee, that the conduct of George Hill, Esq., the mayor of Londonderry, the returning-officer for the said city, had been highly irregular in not verifying upon oath that the poll-books which he delivered in were the original poll-books of the election, upon which the return was founded, and that from the final close of the poll, to the time he delivered in the same, there had not been any obliteration, erasure, addition or alteration made therein, according to the provisions of the 1 Geo. 4, c. 11; and that the conduct of the said mayor had also been highly irregular, and productive of expense to the parties to the petition, in not certifying, according to the provisions of the said statute, on the back of the return to the writ, the names of the candidates, and the numbers who voted for each candidate, as it appeared at the final close of the poll.

CASE XVI.

COUNTY OF LINLITHGOW.

The Committee was appointed on the 29th April 1833, and consisted of the following Gentlemen:

The Earl of Grosvenor, M. P. for South Cheshire, *(Chairman.)*

W. Christmas, Esq. M. P. for Waterford City.

Joseph Marryat, Esq. M. P. for Sandwich.

John O'Connell, Esq. M. P. for Youghall.

John Fielden, Esq. M. P. for Oldham.

Sir Samuel Pechell, M. P. for Windsor.

Lord Viscount Andover, M.P. for Malmesbury.

Thomas Attwood, Esq. M. P. for Birmingham.

The Hon. Cornelius O'Callaghan, M. P. for Tipperary County.

H. A. Fellowes, Esq. M. P. for Andover.

Charles Tyrell, Esq. M. P. for West Suffolk.

Petitioner:—James Joseph Hope Vere, Esq.
Sitting Member:—Sir Alexander Hope, G. C. B.
Counsel for the Petitioner:—Mr. Serjt. Heath and Mr. Rutherford.
Agents:—Messrs. Richardson & Connell.
Counsel for the Sitting Member:—Mr. Follett, Mr. Robertson, and Mr. George Hope.
Agents:—Messrs. Currie, Horne & Woodgate.

THE petition in this case was against the election and return of Sir Alexander Hope, and prayed that the petitioner, Mr. Hope Vere, might be declared duly elected in his stead. The principal charges in it were, that the names of many persons had been improperly refused

to be inserted in the register by the sheriff of the county, and also by the court of review provided by the 25th section of the Scotch Reform Act, 2 & 3 Will. 4, c. 65, consisting of the three sheriffs of Edinburgh, Haddington and Linlithgow; and that the names of many other persons had been also improperly admitted into the register by the sheriff, who had voted for the sitting member; it also contained a charge of treating, which was not persisted in.

At the close of the poll the numbers were, for Sir A. Hope, 267; for Mr. Hope Vere, 253. The petitioner proceeded in the way of scrutiny to put on the poll a sufficient number of votes to destroy the sitting member's majority of 14.

William Robb's case. A person who had claimed as "proprietor," and had been rejected by the sheriff, and the court of review, admitted on the poll by the Committee, who also inserted his name in the register as "a tenant."

The first case entered upon was that of Wm. Robb. He had lodged a claim with the schoolmaster, according to the form in Schedule P. to the 2 & 3 Will. 4, c. 65, "to be enrolled as a voter in the county of Linlithgow, as proprietor of houses and land at Longrig, partly occupied by himself and partly by his tenants, of the yearly value of 10 *l.* sterling and upwards, in the parish of Whitburn, and county of Linlithgow." This claim was sent in on a printed form with blanks, which were filled up in writing; on the margin of it were printed directions as to the filling up of those blanks, which which had been placed on all these forms by the direction of the Lord Advocate. The direction to fill up a blank which occurred after the words "to be enrolled as a voter in the county of Linlithgow," was, "Insert whether as proprietor, tenant or occupant." The title which Robb produced to the sheriff was a tack or lease of a quarter of an acre of land at Longrig, for the term of 999 years, from Martinmas 1822, at the tack-duty or annual rent of 10 *s.*, with liberty to take sufficient stone and sand from a quarry belonging to the lessor to build up the front of his feu, but if he should at any future period erect any additional buildings on this land, he

was to pay a proportionate sum for his stone by way of quarry-mail. The sheriff rejected this claim, and his judgment was affirmed by the court of review. Robb tendered his vote at the election for the petitioner. Evidence was given of the rejection of the claim, which was put in, and appeared marked with the word "reject" twice, and the initials of the sheriff of Linlithgow, and the names of the three sheriffs constituting the court of appeal. The tack was then put in, without any proof of its execution, it being probative by the law of Scotland, and therefore rendered good evidence by itself before a Committee under the 25th section of the Scotch Reform Act. It was admitted that the property was of the annual value of 10 *l.* above the rent.

Heath, Serjt., and Mr. Rutherford, in support of the vote:

The general rule of law, that Acts of Parliament ought to be construed literally, so as to give full effect to their general scope and intention, ought more especially to be applied to the interpretation of one like the Scottish Reform Act, intended to confer great public advantages on classes who never previously possessed them; and many of the details of which are entrusted to persons unacquainted with the technical phraseology of the law. Can then the decision of the court below be sustained, which has rejected the claim of a person, who, as a tenant of lands of the annual value of 10 *l.* above his rent for a period of more than 57 years, was clearly entitled to vote under the 9th section of the Act, because in his claim he stated himself to be proprietor, and not tenant? In common parlance we all know that the possessor of lands for a term of 999 years would be styled the proprietor of them, and words in an Act of this description ought to be taken according to their usual and ordinary sense, not in the confined and limited one, which is familiar to lawyers only. The

words "proprietor" and "property" are certainly used in Scotch law-books to designate the owner of feudal property, in opposition to the words "leaseholder" and "leasehold property," which last is there treated as an incumbrance on the feudal property; but we by no means allow that this word proprietor is a *nomen juris* so strict as not to admit of another interpretation. In fact we not unfrequently find the term "proprietor of the moveables;" it is only where the term "heritable proprietor" is used, that it is solely applicable to feudal property. If therefore the mere words of the claim are to be looked at, it might be fairly contended, that the voter had properly described himself.

The case, however, is still stronger in his favor, when we consider it with reference to the general scope and frame of the Act. Had it been the intention of the Legislature that claims should be in the nature of declarations, and that parties who intend to oppose them should meet them with objections drawn with something of the strictness required in pleas, it would have at least directed that the schoolmaster should show or deliver copies of the claims to any one who might apply for them. All, however, that the Act requires the schoolmaster to do with the claims, after marking on them the date when he received them, is to make up an alphabetical list of the names, designations and places of abode of the claimants, and affix it to the church door, and afterwards to deliver them in to the sheriff clerk, together with the objections that have been lodged with him, and a copy of the list he has made up. He need not therefore show the claims to a single individual before he gives them over to the sheriff clerk, and there is nothing in the list he is directed to make out, which would inform a person intending to object to any one, whether he had claimed as proprietor, or tenant, or occupant. Nor was it the object of the last House

of Commons that objectors (whom it was plainly their wish not to favor) should have anything to assist them, but their own private knowledge of the circumstances of the individual they chose to oppose. Here the claimant came before the sheriff with a claim (or rather what, through an inaccurate use of terms in the Act, was called a claim, but in fact was only a notice of one) accurately drawn according to the form given in the Schedule F, and a title by lease to the lands which explained it. No objection could be taken to the form of the claim, as in the *Petersfield* and *Bedford* cases, for the want of stating the objector's place of abode, since the form was perfectly correct; no objection could be taken to the substance of it, since the claimant was undoubtedly entitled to be enrolled. If there was any difficulty, the title-deed ought to have been held to explain the claim; at any rate these forms, which are put into the hands of persons not acquainted with legal niceties, ought not to be looked into with legal strictness: the sheriffs, however, were advocates, and could not part with their professional scruples, even in administering an Act which had specially provided that "no misnomer or inaccurate description of any person or place in any writing made in the form of any schedule thereto annexed, should in any way prevent or abridge its operation, provided that such person or place was so designated as to be commonly understood." *Naturam expellas furcâ, tamen usque recurret.* Although, however, such had been the decision of the sheriffs constituting the court of appeal in Linlithgow, it was not the opinion of the majority of them, for of the 15 sheriffs who compose the courts of appeal, seven had decided in favor of the validity of claims of a similar description to the present, and only five against them, no case of the kind having occurred before the three who presided in the southern district.

Independently, however, of the reasoning on this particular Act, a strong argument may be drawn from the form of entails in Scotland in favor of the position that a leaseholder is a proprietor. One of the conditions under which the tenant for life, or heir in possession, in all the strict entails, with irritant and resolutive clauses, holds the lands is, that he shall not alienate them. If he does, the consequence is, that the lands go over to the next remainder-man or heir substitute, and the deed by which the lands are aliened is void. If, then, the grant of a lease, longer than 19 years, is held to be an alienation of property by an heir in possession, under an entail of this description, sufficient to destroy his estate, must it not be supposed, that it passes the property to the lessee? Yet leases for 31 years have been set aside under these entails, and the instances of the Queensberry leases, all of which were void on the ground that the grantor had broken the entail by aliening (*a*) his land, are familiar to every one; unless, therefore, property can be supposed to be aliened by a grantor without passing to a grantee, it must be held to be vested in a lessee for 999 years. It is impossible, however, not to see that a lessee of this description must be held a proprietor for the purposes of this Act, from the form of the trust oath, which it permits to be tendered to an elector at the time of his polling. The oath is, that the elector is the individual described in the register, and that he is still the *proprietor* or *occupant* of the property for which he is so registered. If the holder of a long lease is not a proprietor, how can he take this oath? for he is clearly of a different class from an occupier, who has distinct rights under the Act, and he need not, by the special words of the 9th section of it, be in the personal possession of the property. It is

(*a*) See on this subject Erskine's Institutes, book 3, tit. 8, sect. 29, and Mr. Ivory's note to it (No. 426), where all the cases and authorities on the subject are collected.

clear that he was considered as a proprietor by the Legislature; or otherwise, when it bestowed the right of voting on leaseholders out of possession, it must be supposed to have intended, that they might be deprived of it at the option of any candidate, who chose to tender them the trust oath.

Mr. Follett:

The question in this case before the sheriff and the court of review was, whether the voter claiming as proprietor substantiated his claim? The same question is now before the Committee, and they must decide whether a lease from a landlord at a yearly rent is a sufficient proof of proprietorship in Mr. Robb.

The man whom in England we call the freeholder, in Scotland is termed the owner or proprietor, and that class of persons, previously to the passing of the Reform Act, was alone entitled to vote for counties in either of the countries. In both, however, it was necessary that the voter should hold directly from the crown. This in England every freeholder does, as all subinfeudation has long been put an end to by the statute of *Quia emptores*. In Scotland the feudal system still remains unchanged, and there are two classes of freeholders, one holding from the King, the other, by the process of subinfeudation, from individuals; and this latter class had formerly no right to vote at elections. The Reform Act has now given that right, by the 7th section, to the owners of all lands, houses, feu-duties or other heritable subjects of the yearly value of 10 *l.*, obviously using the word "owner" as synonymous with that of "proprietor." Were there any doubt, indeed, on the subject, it would be dispelled by the reading of the 8th section, which bestows the same right on all "co-proprietors or joint owners" in respect of their joint property within the shire, provided the share or interest of each joint owner so claiming in such property is of the yearly

value of 10 *l.* The 9th section extends the franchise still further, by enacting that "tenants in lands, houses or other heritable subjects, shall also be entitled to be registered, and to vote at elections for the shires in which the said heritable subjects are situate;" and it then goes on to enumerate the different classes of tenants to whom it gives the right. The first is that of tenants who have held, for twelve months previous to the day appointed for registration, such subjects or tenements, whether in their personal possession or not, under a lease or leases, missive of lease, or other written title, for a period of not less than 57 years, exclusive of breaks, at the option of the landlord, or (which is the 2d class) for the lifetime of the tenant, in each of these classes the clear yearly value of the tenant's interest, after paying the rent, and any other consideration due by him for his right, being not less than 10 *l.*; the 3d class is where a tenant holds for a period of not less than 19 years, and the clear yearly value of his interest is not less than 50 *l.*: the 4th class is where the tenant has been for 12 months in the actual personal occupancy of the subject, and the yearly rent is not less than 50 *l.*; and the 5th class is where the tenant, whatever the rent may be, has truly paid for his interest in such subject a price, grassum, or consideration of not less than 300 *l.* Throughout this section the words "owner or proprietor" are never used: the sole word of description of the person, whether in or out of occupation, is "tenant." The Act has therefore drawn a broad and manifest distinction between proprietors and tenants; they take their right of voting under different sections; their titles are different, their manner of proving them must be different also.

When, therefore, a party has sent in his claim, is he not to be held bound by it? Can he be permitted to withdraw it after it has been delivered to the sheriff, and to substitute another? The Reform Acts for England, for Scotland, and for Ireland, have made it a condition

precedent to voting, that the voter shall have complied with the machinery of the Act, that he shall be duly registered, and that he shall have done everything those Acts require him to do in order to be registered. In the Scotch Act he is to send in his claim to the schoolmaster, who is to mark upon it the time of its being lodged and presented, so that no mistake can possibly arise as to its identity, and then to transmit it to the sheriff. A form for this claim is given by that Act; the distinction is taken between a proprietor, a tenant, and an occupant in that form; and to the printed one, which was actually filled up and delivered in by this voter, directions were annexed, telling him to state in which of these characters he claimed. With these directions before him this person chose to claim as a proprietor. Is he now, after every method has been resorted to by the Legislature, and by Government, to obviate mistakes or uncertainties in claims, to be allowed to say that he had mistaken his character? After a man has acted in defiance of every warning, ought he not to be made to abide by the consequences? By the decision of the Bedford Committee an error in a notice required by the English Reform Act was held to be fatal (*b*). That statute requires notices of objection to be given in the form it specifies, "or to the like effect;" and yet it was held that a notice omitting the place of abode of the objector, which was inserted in the form, was bad. In the same way the Annuity Act directed a memorial to be enrolled, "in the form or to the effect following," and the Court of King's Bench held a similar omission of the place of abode of the witnesses to vitiate the annuity (*c*). In the Act under discussion there are no words "to the like effect," as in the Acts on which these decisions have been come to; it gives a form, and

(*b*) Flight's case, *ante*, 119.
(*c*) *Darwin* v. *Lincoln*; 5 B. & Ald. 444; *Smith* v. *Pritchard*, ibid. 717.

it requires that form to be followed in every particular; this is, therefore, a stronger case than any that has been decided.

Independently of technical points there is a substantial reason, under the Reform Act, why a voter should be held bound by the claim which he delivers to the schoolmaster; for otherwise it would be impossible to put in a valid objection to any claimant. The Act requires the objector to state in his notice the grounds of his objection; the grounds of objection to a proprietor are very different from those against a tenant, as in this very case, where a notice of objection had been served upon Robb, one of the grounds of which was that he was not a proprietor; and if a man is not to be kept strictly to his claim, nothing will be more easy for him than to turn round on the objector, and say, I own that I have no title as proprietor, in which character you object to me, but I have a good one as tenant, which you are not at liberty to impugn, as you have not stated any ground of objection to it in your notice. It is said, however, that the schoolmaster is not bound to show the claims. Practically we know that every schoolmaster in Scotland both showed them and gave copies of them, and they would have acted in contravention of the spirit of the Act had they not done so. The schoolmaster is a public officer, the claims are public documents, and he is bound to give inspection to all persons interested in them. The object of the framers of that Act no doubt was, that one party should state the right he had to vote as in a declaration, the other should deny that right as in a plea, and that the sheriff should decide the issue between them. What was the meaning of directing the objector to specify the grounds of his objection, if such was not the intention of the Legislature? But how can that intention be effectuated, if a party is to be permitted to withdraw from the claim he has delivered in, and to substitute another whenever he thinks proper.

The English Reform Act only requires notices of claims to be given in the form it specifies, or "to the like effect;" and yet all the revising barristers have required the form to be observed in every essential point, and numerous claimants have lost their franchise in consequence of having sent in their claims to the overseers of a different parish from that in which their property was situate.

With regard to the observation that has been made on the form of the trust oath, it is clear that the word "occupant" is used in it as synonymous with that of "tenant." If indeed occupants and tenants are to be considered as distinct characters, no occupant could be placed on the register-book; for in the form of it, which is given in the Schedule G, No. 1, there is a column headed "proprietor or tenant," but there is no column for, or mention of, an "occupant" throughout it. The simple question remains, whether Mr. Robb has made out his claim to be enrolled as a voter for the county of Linlithgow as a proprietor? He has produced no proof of his being a proprietor; and we hope that the Committee will decide with both the Courts below, that he was not entitled to be enrolled, and consequently not qualified to vote.

The Committee resolved that William Robb was the tenant, and not the proprietor; and that it was their opinion that he was entitled, and ought to have been admitted to vote at the late election for the county of Linlithgow.

In answer to a question by Mr. Robertson, the Chairman stated, that they should insert his name in the register as tenant (*d*).

Robert Cunningham's case.

This person had a lease for 99 years from Martinmas 1820, at the yearly rent of 5 *l.*, or 2 ½ bolls of wheat, at the option of the lessor, with a covenant to build and

(*d*) See Report, *infra*.

keep in repair a house, according to the provisions of the Act 10 Geo. 3, c. 51, for the improvement of lands in Scotland, held under settlement of strict entail. This lease was produced before the Committee, and it was admitted that the property was of the value of more than 10 *l.* per annum above the rent reserved. His claim had been rejected both by the sheriff and the Court of Review.

Tender of a tenant under a building lease for 99 years, who had claimed as a proprietor, held good.

Mr. Follett took a distinction between this and the preceding case, on the ground that the rent in that case was merely nominal, and the term so long, that the lease might be considered as a kind of conveyance of the absolute estate; but in this a fair rent for a building lease was reserved, and the tenant entered into covenants to build and repair, and might be evicted at any time on the breach of them.

Mr. Serjeant Heath insisted that there was no difference in principle between a tenure for 99 and 999 years.

The Committee resolved, that Robert Cunningham was entitled, and ought to have been admitted to vote.

The cases of three other tenders on the part of the petitioner, under similar circumstances to the preceding cases, were then gone into; two of them were decided by the Committee in his favor, after much evidence in one of them as to value, and the third was abandoned.

John Mair's case. A lease referring to a plan admitted in proof without production of the plan.

The next case was that of John Mair, who had also claimed before the sheriff and court of review as proprietor, and been rejected on the same grounds as in the preceding cases. The first title offered in evidence was a building lease from the Earl of Buchan to him for 99 years, at the rent of 6 *s.* 1 ¾ *d.* per annum, of a lot of ground in the village of Broxburn, being No. 55 on the plan of the said village. A full description of the boundary of the premises followed, and it was stated that John Mair had built a smithy on them.

Mr. Robertson objected to the reception of this lease in evidence, unless the plan was also produced.

Mr. Rutherford contended, that there was quite sufficient in the lease to identify the premises, and that it was not therefore necessary to produce the plan, which was in fact in the possession of the Earl of Buchan, and which they had no means of obtaining.

The Committee, after hearing Mr. Serjeant Heath in reply, resolved that the lease might be produced without the production of the plan.

Held that deeds not marked by the sheriff could not be produced as evidence before a Committee.

The lease was then put in, and proved the title of the voter to a part of the property in respect of which he claimed to be enrolled. To prove his title to another part, a lease to a person of the name of John Potter was put in, and a holograph (*e*) deed, purporting to have been written by John Potter, was then tendered, and his son was then called to prove his handwriting.

Mr. Robertson submitted, that the 19th section of the Scotch Reform Act directed the sheriff, in all cases to make a note of the statement of fact, and of the pleas founded on it, and of the names of the witnesses, and to affix his signature to the deeds, writings and other documents produced by the parties in support of their claims and objections, "and that it should not be competent to support any appeal upon any ground of fact or law not set forth in such note of the sheriff, or to produce in the said court any deeds, writings or other

(*e*) *i. e.* written entirely in the party's own handwriting. Deeds of this description, and also deeds containing a witnessing clause in a particular form, and some others, are what is termed "probative" by the law of Scotland, *i. e.* on production prove themselves; it was formerly held, that notwithstanding this, they required to be proved before committees, in the same manner as deeds must by the law of England; it is, however, expressly provided by the 45th section of the Scotch Reform Act, 2 & 3 Wm. 4, c. 65, that probative deeds shall be received before committees in the same manner as they are in Scotland.

documents to which the said signature of the sheriff was not affixed." This proceeding was in fact an appeal from the decision of the Sheriff's Court to a Committee of the House of Commons, and it was not competent therefore for the other party to produce this deed, without contravening the express provisions of the Act.

Heath, Serjt.

In the cases already investigated the deeds were marked by the sheriff; but in this case the sheriff, after he saw in the first title deed that the claimant was tenant, refused to look at the other titles, and noted that only. Is the Committee then to be shut out from inquiring into this claim by the sheriff's declining to investigate the titles, for reasons which have already in three cases been determined to be erroneous? The 25th section of the Reform Act provides, that nothing in it shall be held to limit or restrain the powers of a Committee to take into consideration the validity of any vote or claim. The Committee are therefore not precluded from hearing that evidence. It would be most unreasonable if we were not to be permitted to produce proof of this voter's qualification on this the first and only opportunity we have had of giving it.

Mr. Robertson in reply:

Independently of the general provision in the statute, that no deeds shall be produced on an appeal which have not been noted by the sheriff, there is a particular reason why the Committee should not receive deeds of this description: it is not necessary that a holograph deed should be dated; it may be made, therefore, at any time (*f*); so that the parties may, after hearing the

(*f*) See however, Ersk. Instit. book 3, tit. 2, s. 22. The date of a holograph deed is not proved barely by the grantor's assertion in the body of it that it was signed on such a day.

decision of the sheriff on their title, and then learning what is necessary to complete their claim to vote, manufacture for a Committee any evidence that may be required. We do not dispute the power of the Committee to receive this evidence, but we question the propriety of their doing so, on account of the consequences it would lead to. This holograph deed was stamped this morning, and as it would not have been received in evidence without being stamped, it could not have been ready to be produced before the sheriff.

Mr. Serjeant Heath said, it was the law and practice in Scotland, and here too, to stamp an instrument at any time. At Guildhall, an instrument might be stamped during the trial, and the Court would wait while it was sent to be stamped. It being matter of revenue, no inquiry would be made as to the time of stamping it.

The Committee resolved, that the document proposed to be given in evidence could not be received.

Parol evidence not received to prove the tenure of lands held under deeds which the Committee had refused to admit as evidence.

Potter's son was then recalled, and said he had succeeded on his father's death to the subjects held by him of Lord Buchan. He was then asked, how long it was since he had had anything to do with those "subjects?"

Mr. Robertson objected to parol testimony of the claimant's title, after the decision of the Committee against receiving the written title.

Mr. Serjeant Heath contended, that he was entitled to prove by parol testimony that the voter had been in possession of the property contained in the lease to Potter for many years, and had constantly paid the ground-rent to the Earl of Buchan during that time.

Mr. Robertson, in reply, contended that parol evidence could not be received of the possession of property held by a written title.

The Committee decided, that the question should not

be put, and that parol evidence should not be received to supply the defect of the title.

Mr. Serjeant Heath then proposed to call the agent of Lord Buchan, to prove from his books that the voter was entered as tenant, and that he had received rent from him for eight years, and that he was in possession of this property.

Mr. Robertson objected to this evidence also, on the same grounds as he did to the evidence of Potter's son.

The Committee decided that the evidence proposed to be given could not be received; and the Chairman informed the counsel for the petitioners, that unless there was any other evidence in support of Mair's qualification, the Committee were of opinion that this case was one that could not be pressed.

The further discussion of it was then abandoned.

David Darge's case. Where bribery is alleged against a tendered vote, the qualification of the voter to be put on the poll must be proved before the charge of bribery can be entered upon.

The next case was that of David Darge; his name was on the poll-books as a tender.

Mr. Robertson objected to evidence being entered into to prove Darge's qualification, because, had he been on the register, he would have been incapable of voting, since he had received a bribe, which the sitting member was prepared to prove.

Mr. Serjeant Heath submitted that Darge's name ought to be put on the poll, before the Committee could go into the charge of bribery.

Mr. Robertson replied that it would save time to go into the case of bribery in the first instance.

The Committee decided, that the proof of title should be gone into in the first instance.

Darge's title was precisely similar to those of the voters in the preceding cases, a lease for 99 years; and he claimed like them as a proprietor before the sheriff. The value of his property was admitted; and Mr. Robertson then opened his case of bribery against him, and called the petitioner's factor and Darge himself to

prove it. They both of them alleged that a sum of money which was paid to Darge a short time before the election was in payment of an old debt of the petitioner's to him, against which the time of prescription in Scotland had run.

The Committee determined that Darge was entitled, and ought to have been admitted to vote.

James Ritchie's case. The case of a person whose claim had been rejected by the sheriff, and had not appealed from it, refused to be entered into.

The claim in this case was marked "rejected" by the sheriff, and it did not appear that the claimant had appealed from the decision of the sheriff to the court of appeal.

Mr. Robertson objected to this case being gone into. The Committee had already decided that they would not receive evidence which was not before the sheriff; if they proceeded with this case they must admit evidence which was never before the court of review, and therefore liable to greater objections. The 23d section of the Reform Act had declared that the judgments of the sheriff should be conclusive of the rights of the parties so long as they remained unaltered, unless the party against whom it was given should give a notice of appeal to the superior court. Here no notice of appeal had been given; and although it was competent for the Committee to take into their consideration the validity of this vote, yet in doing so they would act in contravention of the intentions of the Legislature, which certainly proposed, that a voter should go through both the Courts below before he applied to this tribunal.

Heath, Serjt.

It is clear and admitted on the other side that it is not imperative on us, under the Reform Act, to go to the court of review. If the Legislature meant that we should be shut out from going before a Committee because we did not appeal, it would have been easy to have found words to do so, but there are no such words in the Act. We had good reasons for not going to the court of review, as, without wishing to cast any reflection on

the gentlemen constituting that court, we suspected that two of them entertained strong opinions against the validity of the claim, one of them being in fact the sheriff who had rejected this vote. Is it then surprising that we preferred to appeal to a Committee?

The Chairman here stated that the Committee were aware of their power, but they thought this a question for their discretion. If this party went to the court of review, he would be confined to the same evidence which he gave in the sheriff's court, but coming here without having gone into the court below, he might produce new evidence never produced before the sheriff. This was an inconvenience, and he believed it was the practice in courts of law to confine parties to the same evidence in appeal.

Heath, Serjt.

On the granting of new trials in our courts the parties are not restrained to former evidence, but may bring all the evidence that will help their case. So also on appeals at sessions, they are not confined to the evidence given before the justice. The law in this case did not preclude us from appealing to the Committee, nor compel us to go to the court of appeal below.

Mr. Robertson, in reply, observed, that in appeals from the Court of Session to the House of Lords, the practice was invariable(*g*) not to receive evidence that was not given in the Court of Session, and that this was the general and inflexible rule in all courts of appeal.

The Committee resolved, that J. Ritchie, having neglected to appeal to the court of review, his case should not be gone into.

The case of Robert Miller, whose name appeared amongst the tendered votes, was then proceeded with. Robert Miller's case.

(*g*) See *Tennant* v. *Henderson*, 1 Dow. 332; and Blackst. Com. vol. 3, c. 27, p. 455.

In a notice of claim for a Scotch County, it is not necessary to set out the names of the claimant's tenants.

An objection was taken by Mr. Robertson, that he had not sufficiently complied with the 13th section of the Reform Act, by giving a sufficient description of his property in his notice of claim. The subjects were situate in two different parts of the Burgh of Bathgate. The description he gave of it was, "partly in the occupation of myself, and partly of my tenants." It was nearly impossible to identify the property under this description. It was certainly the meaning of the Legislature that the claimants should set out the names of their tenants, or of the street in which the property was situated; and in the form of claim for counties given in the English Reform Act, there is an express provision that, "where the property is not situate in a street, lane, or other like place, the claimant is to state either the name of the property or the occupying tenant."

The Committee decided that the claim was sufficiently specific.

Mr. Rutherford then proposed to put in the title deeds of the claimant.

Evidence not admissible to show, that deeds not marked by the sheriff were produced before him.

Mr. Robertson objected to the reception of these deeds, because they had not been marked by the sheriff, and therefore must be presumed not to have been produced before him. The committee-room was cleared. After some time Mr. Rutherford and Mr. Robertson were called in, and the Chairman inquired, whether the claim was rejected by the sheriff on account of the insufficiency of the description? The counsel replied, that the claim was admitted by the sheriff, and rejected by the court of appeal. The Chairman also inquired, whether the claimant had an opportunity of producing the papers necessary to prove his title for the consideration of the sheriff depute? The counsel replied, in the affirmative. The rest of the counsel and parties were then called in, and informed by the Chairman that the documents proposed to be given in evidence could not be received.

Mr. Serjeant Heath then stated that he could prove that Miller did produce the papers before the sheriff, that they were on the table, spoken to, and discussed, but were not marked. The Committee inquired, whether the sheriff refused to mark them? Mr. Serjeant Heath replied, "he believed not." The Committee decided that the papers not being marked could not be received. The vote of Robert Miller was then withdrawn from the consideration of the Committee.

The Rev. Robert Rennie's case.

The next was the case of the Rev. Robert Rennie. He had been duly registered, and not objected to before the sheriff.

A voter who is on the register, and has not been objected to before the sheriff, cannot be objected to before a Committee.

Mr. Robertson insisted, that this case could not be gone into unless in contravention of the preceding decisions of this Committee, who had refused to hear evidence which was not before the sheriff, and also of the decisions of Committees this session, on the English Reform Act.

Mr. Rutherford stated, that no objections having been lodged, the sheriff admitted the vote without any examination (*h*) whatsoever, although he was bound by the statute to have required a *primâ facie* title to have been made out; no titles were produced, nor witnesses examined. As there was no objection before the sheriff, there was no appeal to the court of review allowed by the Act; but great injustice would be done if the Committee now should refuse to go into the qualification of this person; and it did not fall within the principle of the last decision, that they would not hear appeals of cases not appealed to the court of review, because this case could not be appealed.

A member of the Committee then inquired whether

(*h*) No evidence was given of this fact. The objection intended to be made was, that the sheriff took cognizance of the claimant being a minister of a parish, without calling for strict evidence of his appointment, &c.

the petitioner was a voter for the county, and could have taken the objection? and was answered in the affirmative.

The Committee decided, that the Rev. Robert Rennie not having been objected to before the sheriff, they would not then enter into his case.

The Rev. A. D. Tait's case. A Committee will not enter upon the case of a voter unobjected to before the sheriff, but rejected by him, and afterwards placed on the register by the court of review.

In this case, the voter had not been objected to before the sheriff, but the sheriff thought he had not made out a *primâ facie* case, and therefore rejected his claim. He appealed to the court of review, who reversed the judgment of the sheriff, and put him on the register; but the counsel for the petitioner now sought to strike him off the poll.

Mr. Robertson submitted, that without impugning their previous decisions, the Committee could not reverse the judgment of the court of review, where there had been no objection made in the court below.

Heath, Serjt.

Contended that there was no similarity between the Scotch and English Reform Acts as to appeals, there being no intermediate appeal between the barrister and the House, and therefore that the decisions upon the latter ought not to have any weight on such questions with a Committee sitting upon a petition under the former. The Irish Act bore, however, a strong similarity to the Scotch, because in that there was an appeal from the decisions of the barrister to the judge of assize. The decisions of Committees upon that Act ought, therefore, to have a certain influence, and the Longford Committee had lately decided, that they had the power of hearing cases, where no objection had been made before the barrister. It would be almost impossible, without injustice, to establish as a rule, that Committees would, in no case, allow votes to be disputed before them which had not been objected to in the courts below, because many disqualifications might be

incurred after the time for making objections had passed. This case clearly differed from that which had been decided upon by the Committee, because here the voter had appealed, and if he was permitted to proceed, he was prepared to show that both courts below had decided without requiring any evidence at all to be produced in support of the titles.

Mr. Robertson replied.

The Committee determined that the case of the Rev. A. D. Tait should not be gone into.

The counsel for the petitioners then abandoned their case.

The Committee then resolved, that the sitting member was duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious. These resolutions were reported to the House by the Chairman, and the report proceeded to state that "the Committee had also to inform the House that they had altered the register (*i*) and poll taken at such election by inserting the names of Wm. Robb, &c. (five names), as having a right to vote at such election."

(*i*) This report differs from the form of report which has been generally adopted by Committees on English petitions, in stating that the Committee had altered the register. This a Committee on a Scotch election petition have the power of doing under the 2d and 3d Will. 4, c. 65, s. 25. Under the English Reform Act, 2 Will. 4, c. 45, s. 60, the Committees on election petitions are directed to alter the poll, and report their determination to the House, "and the House shall thereupon carry such determination into effect, and the return shall be amended, or the election declared void, as the case may be, and the register corrected accordingly.

This power of altering the register is thus exercised: by a resolution of the 11th of June last, the Speaker is to direct the officer having the custody of the register to make the corrections in it, reported by the Committee to have been made in the poll. In the *Southampton case* some difficulty arose in the execution of this order, in consequence of the votes struck off on the ground of personation; after a certificate of the fact, however, had been obtained from the chairman of that Committee, the Speaker directed the town-clerk to leave the names in question upon the register. The cases of bribed votes, and of agents will present similar difficulties.

CASE XVII.

TOWN OF GALWAY.

The Committee was appointed on the 23d of April 1833, and consisted of the following Gentlemen:

Lord Viscount Stormont, M. P. for Norwich, *(Chairman.)*

Richard N. Shawe, Esq. M. P. for East Suffolk.
Philip Henry Howard, Esq. M. P. for Carlisle.
Joseph Neeld, Esq. M. P. for Chippenham.
H. W. Tancred, Esq. K. C., M. P. for Banbury.
Robert Ingham, Esq. M. P. for South Shields.
Richard Godson, Esq. M. P. for Kidderminster.
James Grattan, Esq. M. P. for Wicklow County.
Colonel Davies, M. P. for Worcester County.
Lord Charles James Fox Russell, M. P. for Bedfordshire.
John Martin, Esq. M. P. for Tewkesbury.

Petitioners:—(1st.) Martin Joseph Blake, Esq. (2d.) Electors.
Sitting Members:—Andrew Henry Lynch, and Lachlan Maclachlan, Esqrs.
Counsel for the Petitioners:—Mr. Serjt. Merewether and Mr. Rogers.
Agent:—Mr. Stephens, of Bedford-row.
Counsel for the Sitting Members:—Mr. Harrison, Mr. Follett, Mr. Campbell and Mr. Austin.
Agents:—Messrs. Burfoot.

THERE were two petitions in this case. The course taken by the counsel for the petitioners renders it only necessary to state, that both of them involved a case of scrutiny into the votes of freemen admitted under the

Galway Act (*a*), the stamps for whose freedoms were, it was alleged, paid for by the sitting members, their agents and others employed by them at the election, and by their friends and others acting for and sanctioned by them; and that the second petition also alleged the illegal exclusion of Mr. Valentine Blake from the list of candidates, and a colorable majority to have been thereby gained by the sitting members. The petitions respectively prayed the amendment of the return by the insertion of the name of Mr. Martin Joseph Blake, and those of Mr. Valentine Blake and Mr. Martin Joseph Blake, or one of them, in the place of one or both of the sitting members, or a declaration that the election was wholly void.

There were registered about 2,100 votes. At the close of the poll the numbers for the respective candidates were as follow:

For Mr. Lynch - - -	1,265
Mr. Maclachlan - -	951
Mr. Martin Joseph Blake -	807

Freemen admitted under the Galway Act within six months before the election, and shortly before the registry, held not entitled to vote.

Mr. Serjeant Merewether opened the case on behalf of the petitioners. He stated that he would at first confine himself to one point, the validity of the votes of between 700 and 800 freemen, who were admitted between the 10th of September and the 10th of November 1832, of whom Mr. Maclachlan had polled 468. The majority of Mr. Maclachlan over Mr. Blake was only 144. If this point, therefore, were decided in favor of his clients, Mr. Blake would be entitled to the seat. Of the freemen who voted at the last election about 40 only were old freemen; to the remainder of those who voted there were two objections: 1st, that they had not been admitted six calendar months previously to the election; 2d, that they were admitted for the occasion and purpose of the election.

(*a*) 4 Geo. 1, c. 15.

Provisions against occasionality, one of the strongest grounds of objection which could be urged against a vote, had been long made by English statutes, which had successively prohibited the splitting of freeholds (*b*), the creating of freemen for the purpose of an election (*c*), and the acquisition of a right to vote by inhabitant householders within a less period than six months (*d*). The same spirit influenced the Irish legislature in their enactments in the 21 & 22 Geo. 3, c. 21, and the 29th section (*e*) of the 35 Geo. 3, c. 29, which was nearly to the same effect as the Durham Act, and which, although the statute in which it was contained had been repealed, as far as related to counties of cities or counties of towns, by the 4 Geo. 4, c. 55, had been re-enacted in the 32d section of the latter Act, and continued to be the law to the present time. That law prohibited any person from voting as a freeman who had not been admitted to his freedom six calendar months previous to the teste of the writ, unless his freedom came to him by birth, servitude or marriage. It was indisputable that these freemen had not been admitted six months previous to the teste of the writ; unless, therefore, their freedom could be shown to have come to them by birth, marriage or servitude, their case was clearly brought within the purview of the statute.

2dly, these votes, from the circumstances attending their creation, were clearly occasional. The Reform Act passed on the 7th August 1832, at which time there were only 40 resident freemen. Certain freemen created in 1792 had been objected to before a Committee in

(*b*) 7 & 8 Wm. 3, c. 25, s. 7; 53 Geo. 3, c. 49.

(*c*) The Durham Act, 3 Geo. 3, c. 15.

(*d*) 26 Geo. 3. c. 100.

(*e*) That no person shall be admitted to vote as a freeman at any election of a member to serve in Parliament, whose freedom shall not have come to him by birth, servitude or marriage, unless he shall have been admitted to his freedom, or his freedom shall have been granted him, six calendar months at least before the teste of the writ for holding such election.

1813, and rejected as occasional, which was probably the reason why the number had become so small. By that Committee the right of election had been declared to be "in freeholders of the town and county of the town of Galway, and in freemen of the corporation" (*f*), an amendment proposed to be introduced, by the addition of the words "admitted under the Galway Act," having been negatived. That resolution had been since confirmed by two Committees. The new freemen had been created under a right founded on the Galway Act, which was intituled, "An Act for better regulating the Town of Galway, and for the strengthening the Protestant interest therein" (*g*). The object of that Act being to exclude foreigners, and to encourage the trade of the place, it gave to trading inhabitants there, and to persons who should have come there for the purpose of exercising their trade, the privilege of being freemen without payment of fees. In the present instance, however, the greater number of the persons admitted were of such a class, as would show that their admissions were not effected for the encouragement of trade: persons had been actually advertised for, and their stamps paid for by others, not by themselves. All the circumstances showed the real nature of the transaction. On the 3d of September a placard was posted up in Galway, headed

(*f*) 18th June 1813, 68 Journ. 579, confirmed on appeal by a resolution of 28th April 1814, 69 Journals, 216, which last resolution was held to be binding by a subsequent Committee. Galway County Minutes, 19th March 1831. The right of voting was, by Mr. Valentine Blake, the petitioner of 1813, contended to be "in the freeholders of the town and county of the town of Galway, and in the free burgesses and freemen thereof, such freemen having been resident in the said town and county of the town of Galway, and the liberties thereof, at the time of their election, and also at the time of their voting." After the decision of the Appeal Committee, a Bill was brought in by Mr. Blake for the purpose of conferring the franchise on resident protestants and catholics, but was lost on the second reading, 7th June 1814. Hansard, Parl. Deb. vol. 28, p. 6.

(*g*) 4 Geo. 1, c. 15.

"Electors of Galway," and therefore not confined to traders. The notice it contained was in these words: "An office is this day opened at Mr. Dominick Doyle's office, in Middle-street, to facilitate your registry. Apply there, and a notice will be filled for you according to the Act of Parliament, and every assistance will be given to accomplish your registry. Apply immediately; the registry is at hand; not a moment is to be lost. Freemen! your notices to be admitted to your freedom are ready; apply for them without a minute's delay." Another notice, headed "Householders, Freeholders and Freemen," was inserted in the Connaught Journal; it was as follows: "The office at Mr. Doyle's house, in Middle-street, will be opened at 10 o'clock on Monday, and will continue open during the sessions, for the purpose of facilitating the registry.—Galway, October 6, 1832."

The corporation of Galway had for a long time been under the influence of Mr. Daly's family. The gentleman who at the time of these admissions was mayor, was a son of Mr. James Daly, and held a commission in His Majesty's hussars; his deputy was Mr. Edmund Blake, by whom these freemen were admitted. When the freemen were to be made, the application to procure stamps was made to the stamp distributor by Mr. James Daly, who afterwards paid for many of them. At that time Mr. Daly's son was a candidate, and continued to be so until a short time before the election. The admissions would all be found to be dated the 18th of September, which was nearly the last day for giving notices of registration, and to be signed by Mr. Blake, as deputy mayor, though at the time of signing them he had ceased to be so; it would be shown too that both the mayor and his deputy were improperly appointed, which was another reason for invalidating these admissions. The office for registry at Mr. Dominick Doyle's was used as the place for managing the elec-

tion of Mr. Lynch, by whom the charge for advertising the notices before-mentioned was paid. The sitting members were connected in interest, and had a joint committee.

In support of these votes Mr. Hudson's comments would probably be cited on the other side. He says (*h*), "the statute franchises really are not embraced by the enactments of the 4 Geo. 4, c. 55, at all, or rather, fall within the exception to that clause; 'freedom by service' is one of the excepted cases, and it appears that the statute franchises, founded as they are upon the exercise of a trade, mystery, or handicraft, manufacture or art, have been considered as equivalent to title by apprenticeship; and, if so, freemen by statute, being freemen by service, could have voted immediately upon their admission." Mr. Hudson's observations were founded upon the preamble to the late Act (*i*) for reducing the stamps on the admission of freemen, which states such freemen to have been treated "as apprentices," which possibly they might have been for the purpose of the revenue, or for the ease of the subject, but that would not give them the title to freedom by service.

Inasmuch, then, as the statute of the 4 Geo. 1, c. 15, had not been acted upon in Galway, and as the decisions of former Committees had always been against such votes, it could not be contended that the Act was now in force. Before the Reform Act passed these men had not the right, and it was not intended by that Act to give them a right not possessed before. The 9th section was conclusive against them, as well as the 4 Geo. 4, c. 55, which, unless an intention were shown to be apparent on the Act to the contrary, must be taken to be saved by the provisions of the 55th section of the Reform Act.

(*h*) Hudson on the Elective Franchise in Ireland, p. 143.

(*i*) 2 & 3 Wm. 4, c. 91.

Mr. Harrison having assented to this single point being first taken, though contrary to the usual practice, by which counsel were required to open their whole case at once, the poll-books and affidavit of the returning officer, under the 4 Geo. 4, c. 11, sec. 4, were produced and proved.

A vote, unobjected to at the registry, may be questioned before a Committee.

The vote of Wm. Grey was then proposed for scrutiny, upon which Mr. Follett objected, that it was not competent for the Committee, if they acted in conformity with the previous decisions on the English Reform Act, to enter upon the investigation, as no objection had been raised to the right of this party before the barrister. The Irish Reform Act, besides, gave no appeal in the case of persons admitted upon the register, the object of the Act being to extend the elective franchise.

Mr. Serjt. Merewether, in answer to the objection, urged, that there could have been in this case no objection before the barrister. The registry took place on the 10th of October, and it could not then be urged against the claimant that he had not been admitted six calendar months before the teste of the writ, as required by the 4 Geo. 4, c. 55, sect. 32, as it could not be known by anticipation that the writ would issue in the December following (*k*). The voter here came within the 59th section of the Irish Reform Act, for he was "disqualified from voting" at the time of the election, and yet had "presumed to vote."

Mr. Follett, in reply (*l*), referred to the 29th section, which provides that any person duly registered as a voter within the Act, shall be entitled to vote immediately. The word "disqualified" meant a personal

(*k*) A similar point to this raised here is suggested in the Introduction, *ante*, p. 4, as to the necessity for registering annuities with the clerk of the peace.

(*l*) The arguments have been given in the above compressed form, as the same point has been so frequently raised in the Irish cases of this Session, and with the same result, except only in the case of Carlow.

inability, as by the receipt of alms (*m*), or of bribes, or by the commission of felony, or by being an alien (*n*), which objections might still be inquired into before Committees.

The Committee resolved, on the following morning, "That the counsel for the petitioners be allowed to go into their case upon the vote of Wm. Grey." 26th April.

The following evidence was then gone into:

Mr. Wm. Redington, the stamp-distributor for the Galway district, stated, that he had been applied to about the 11th or 12th of September, on the subject of the freemen's stamps in his possession, by Mr. Daly, sen. and Mr. Edmund Blake; that he had then 600 in hand, which he made up to 1,008, in consequence of a direction from Mr. Daly to that effect; that he received the stamps on the 14th of September, which were all 1 *l.* stamps; that Mr. O'Hara, the town-clerk, ordered him to supply his deputy, John Michael O'Hara, with stamps whenever he required them; that between the 8th and the 17th of October he had supplied 432, and that the supply was continued up to the last day of registration in small quantities, the total number supplied being 771; that no stamp was supplied to any other person; that the payments were made as follow: 432 *l.* on the 18th of October, by a cheque of the deputy town-clerk on the Branch bank in Galway; 135 *l.* in the week ending the 1st of November; 50 *l.* in cash in the week ending the 8th of November; 100 *l.* in the week ending the 15th of November, of which sum 50 *l.* was paid by Mr. J. M. O'Hara, and 50 *l.* by Mr. Edmund Blake; and the balance, 54 *l.*, was paid a considerable time after by Mr. Daly's cheque for 50 *l.* on Mr. James

(*m*) *Barker's case*, Bedford, *ante*, p. 123. *Godfrey Levi's case*, Bedford, *ante*, p. 147.

(*n*) *Barbre's case*, 2 Peck. 118.

Smith, of Loughrea, the land-agent to Mr. Daly, and 4 *l.* in cash allowed to the deputy town-clerk for commission.

This witness also stated, that in former years the persons requiring the stamps always paid for them; that on the occasion of the previous elections about 36 stamps were applied for, but that he had not supplied any between the two elections; that he recollected having delivered a few stamps on former elections to the persons themselves; that the amount of duty at previous elections was 3 *l.* on the admission of non-resident, and 1 *l.* on that of resident freemen; at the last election 1 *l.* only; that at the previous election Protestants and Catholics were admitted indiscriminately by *grace especial*, paying 3 *l.* each for their stamps. He had observed a placard on Mr. Dominick Doyle's window, stating that an office was opened there for the purpose of registering freemen. He had known Wm. Grey of Church-lane (the voter), for six years; he was a pedlar, and a pensioner, having been a sailor. He did not know he was a weaver; Grey was a Protestant.

The placard before referred to was then proved to have been inserted in the Connaught Journal as an advertisement, as were also the address headed "Householders, Freeholders, and Freemen," dated the 6th of October; two addresses, one by Mr. Lynch, the other by Mr. Maclachlan, dated the 24th of October, and a notice, dated the 17th of December, headed "Town of Galway Election," containing the names of the joint committee of the sitting members: for the last advertisement Mr. Lynch was proved to have paid one-half the cost of its insertion, and for the three first to have paid the whole.

The registry was admitted to have commenced on the 10th of October, and to have terminated on the 15th or 16th of November, and the teste of the writ to have been the 3d of December, and the election to have

commenced on the 15th or 16th of December, and to have ended on the 20th, the return being dated the 14th of December (the day of nomination.)

Mr. John Michael O'Hara, the acting town-clerk, stated, that he was not aware who deposited the money at the Branch Bank, which he drew out by cheques, with the exception of a sum of 76 *l.* received by him from individual applicants for their freedom; that he believed all the admissions were dated the 18th of September; that there were six volumes of them, containing about 770 stamps; that there was brought to his office at Kilroy's a list of names of persons applying for their freedom, in a blue-covered book, the names being alphabetically arranged; that he had no doubt the book came from Mr. Dominick Doyle's, and was brought, he believed, by Mr. Jeffery Morris; that he believed the notices of claims were also sent in on files alphabetically arranged; that some entries were made in the swearing-book from the notices, others from the blue-book; that many of the entries in the swearing-book were in the handwriting of Mr. Jeffery Morris, who was not a member of the corporation, and had nothing to do with the town-clerk's office, but was active at the election in support of the sitting members; that the claims were considered at a meeting of the common council at Kilroy's, for the assembling of which the usual notice was given; that the mayor read out the name of each applicant from the swearing-book, and put the question of admission, and admitted each with the assent of the council; that there were in all about six rejections, one of which was the case of Purdon, a merchant's clerk, where the objection before the council was, that the man was not an artisan or tradesman, and the council decided that he was not entitled to his freedom; that he recollected the admission of one Stanton, a blind man, and a pensioner, who kept a confectioner's shop; that the 19th of September was the last day for notices of regis-

tration; that the last admissions by swearing in took place on the 18th of September, the freemen subscribing the roll as they were sworn in; that he signed all the stamps as soon as possible after the 18th September, having drawn them up in the form in which they appeared, and dated them as of that day; that all the admissions were stamped and filled up, and signed by Mr. Blake, as deputy mayor, before the registration; that the barrister admitted no freeman on the list without examining the stamp; but he was not apprised that the stamped admissions had been lately filled up.

With regard to the appointments of the mayor and deputy-mayor, the following facts were established by the evidence of this witness, and by reference to the corporation book: That Mr. Dennis St. George Daly was elected a free burgess, common-councilman, and mayor, on the 1st of August 1831, on which day he was also sworn in a freeman, the entry in the book of that date stating him to have been elected on the 14th of June previous, though no entry of corporation proceedings was to be found between the 9th of June and the 1st of August; that he resided, not in Galway, but at the distance of about 16 or 17 miles from the town, but of late had been with his regiment wherever it was quartered; that he was sworn in on the 29th September 1831, and then verbally appointed Mr. Edmund Blake his deputy, who was sworn in immediately after, but no entry of the appointment appeared in the corporation book; that Mr. Blake's appointment received the approbation of the privy council. The stamp on Mr. Daly's admission had not the word "corporation" on it.

The entry of the voter's admission was as follows: "Be it remembered, that William Grey, of Mainguard-street, weaver, of the town of Galway, being entitled as of right to his freedom as a weaver, under and by virtue of the Act of the 4 Geo. 1, c. 15, and of the 1 & 2

Will. 4, c. 49, and having before the mayor of Galway taken the usual oath as a freeman, and having subscribed the oath under the 10th Geo. 4, c. 7, is this day entered in the books of this corporation as a freeman, and admitted accordingly; dated this 18th day of September 1832.

(signed) "*Edmund Blake*,
Deputy-mayor."

An account opened by a sitting member with the Bank of Ireland may be given in evidence, notwithstanding objections are made by the managers to the disclosure.

Mr. O'Hara, senior manager of the Bank of Ireland, and town-clerk of Galway, was then examined: He stated that Mr. Lynch kept an account with the bank, but not Mr. Maclachlan. He objected, on the part of the bank, to produce the book containing the accounts of their customers, the solicitor for the bank having instructed him to do so. The production was also objected to by Mr. Campbell, on behalf of the sitting members (*o*). Mr. Serjeant Merewether insisted that the petitioners were entitled to an inspection of the book, and cited the *Norwich* (*p*), *Oxford* (*q*), and *Evesham* (*r*) cases. The Committee decided that the book should be produced, but should not be in evidence except as to the account of Mr. Lynch.

The witness had no recollection of any sum to the

(*o*) In the *Pontefract case*, Minutes, 10th March 1827, a witness, Perfect, a banker, admitted that Mr. Houldsworth, the sitting member, had an account in their books with the Leeds bank. He produced the Leeds ledger, and was asked when the account with the Leeds bank first commenced. The question was successfully objected to. In the same case the production of some cheques of Messrs. Smithson and Ramshill was objected to, and the objection allowed by the Committee. This last decision was on the ground that agency should not be proved through bribery or treating. In the *Oxford case*, *ante*, p. 63, Mr. Morrell, the banker, said he did not object to the production of his books, if the counsel for the sitting member had no objection to the disclosure of his client's account.

(*p*) 3 Lud. 448.

(*q*) *Ante*, p. 63.

(*r*) Minutes, 1830; and see 1st *Southwark case*, Clifford, 105. *Petrie's Cricklade case*, 82.

amount of 432 *l.*, drawn on the bank on the 18th of October, by John Michael O'Hara, who had no account with them. A cheque was produced by him, dated October 3rd, 1832. It was in these words: "Pay the mayor's balance to the town-clerk, 495 *l.* 10 *s.*" and was signed "John O'Hara." The witness stated, that an account had been opened by the mayor, for making good to the town-clerk the sums paid for stamps soon after the franchise Act(*a*) had passed. He was then directed by Mr. Serjeant Merewether to refer to the mayor's account.

Mr. Austin objected, that the resolution of the Committee being confined to the account kept by Mr. Lynch, the petitioner's counsel were not entitled to refer to the mayor's account.

Mr. Serjeant Merewether insisted, that having found an account opened for stamps, he was entitled to examine into it, for the purpose of ascertaining whether particular items were included in the account. It was not material who paid the money, if the voter did not; and he was entitled to show the vote to be occasional. [A member of the Committee: Suppose 400 persons had paid 1 *l.* each to the mayor, and the mayor had paid the amount into the bank, could you inquire as to all those 400 sums?] When I am told that O'Hara has no account with the bank, and still find him drawing on it for the payment of stamps, I am surely entitled to know who deposited the money. I shall be satisfied with a direct answer to the question, "Where did the sums paid to Redington come from?"

The Committee decided, that the counsel for the petitioners be not allowed to inspect the accounts of John O'Hara, John Michael O'Hara, or Edmund Blake.

30th April. A member of the Committee, Colonel Davies, being unable to attend on the 27th, the Committee, after sitting one hour, adjourned until the Monday, when

(*a*) 2 & 3 Wm. IV. c. 91.

leave was obtained from the House, (at the five o'clock sitting,) for the Committee to sit on Tuesday in his absence.

A member of the Committee, (Mr. Godson,) having inquired whether it was proved what the voter had originally been? another witness was called, who stated that he had known the voter for 14 years; he was a hawker, and kept a hardware stall in the street; he had never known him carry on the trade of a weaver, nor profess himself to be of that trade, but he did not know whether he had served to a weaver or not.

Mr. Rogers for the petitioners:

Occasionality had always been, in a parliamentary sense, a fraud. The usual definition of an occasional voter, although perhaps not strictly accurate, was "one whose qualification, whether from estate, office, or other cause, was conferred or taken for the purpose of voting for a particular candidate, or in a particular interest." This definition had been frequently cited as a fair and legal one, and the creation of this species of voters had always been looked at with great jealousy, and carefully guarded against, from an early period of our parliamentary history. The first legislative enactment on the subject was the 11th Geo. 1, c. 18, passed "for regulating elections within the City of London," by which freemen were required to take an oath, that they had been so for 12 calendar months previous to the election. Then came the 3d Geo. 2, c. 8, for better regulating elections in the city of Norwich, which contained a similar oath. These Acts were followed up by the 18 Geo. 2, c. 18, and 19 Geo. 2, c. 28, which required that voters in counties, and cities and towns being counties, should be possessed of their freeholds for a year before voting; but it would be remarked that occasionality in freemen had, in the cases of London and Norwich, been the first to demand the interference of Parliament. The next Act, called the Durham Act,

3 Geo. 3, c. 15, applied generally to all freemen, and excluded them from voting unless they had been admitted 12 calendar months before the election, and arose out of the Durham election in 1762.

These were the statutable restraints imposed upon occasionality in England; in Ireland, the 35 Geo. 3, c. 29, s. 29, re-enacted by the 4 Geo. 4, c. 55, s. 32, required only that the freeman should have been admitted to his freedom six months previous to the election, and contained an exception in favor of service, birth-right, or marriage, similar to the exception in the Durham Act. The first objection, therefore, to the vote of William Grey would be, that the registry having taken place within six months of the time of his admission, his right to be registered was not complete; 2dly, even if he had a right to be registered, still that he had no right to vote at the last election; that his case fell within the provisions of the 35 Geo. 3, c. 29, s. 29, and the 4 Geo. 4, c. 55, s. 32, and did not come within the exception contained in those sections; but even if the Committee thought that the case did fall within the exception, and should be satisfied by the argument on the other side, that the right under the Galway Act was equivalent to a right by servitude, and therefore excepted out of the operation of the above Acts, then he should contend, that the vote being occasional and fraudulent, was void by the common law. Now it was clear from the observations of Lord Somers, in *Onslow* v. *Rapley* (*s*), the decision of which case was long before the earliest statutable provision on this subject, that an occasional vote was bad by the common law; and it was to be remarked, that in the Durham case, which gave rise to the Durham Act, the Committee of privileges struck off 215 votes as bad for occasionality (*t*); so that neither that Act nor any that pre-

(*s*) Somers' Tracts, 279. 1 Peck. 350, in notis.
(*t*) 1 Douglas, 238, note (A.)

ceded it created occasionality; since the above statutes indeed the law had declared that the vote of a freeman in England admitted within 12 months, or in Ireland admitted within six months, was absolutely void, and a Committee had no power on the subject; but it had not deprived them of the power of striking off any vote under any circumstances, if fraud and occasionality be distinctly shown to them (*u*).

In the *Durham case*, which excited great ferment in the country, only 215 freemen were created. It was therefore utterly insignificant in comparison with this case, in which 771 freemen were admitted the day before they delivered their notices of registration, the whole number on the freemen's roll being only 794. Such outrageous occasionality had no parallel on record.

In the amendment of the representation, it would be seen that the anxiety of the Legislature had been unabated in endeavouring to prevent occasionality. This was clearly perceptible in the English Reform Act, with respect to every class of voters (*x*). So in the Irish Act, from the 5th, 7th and 13th sections, it was evident that occasionality in every class of voters had been in terms specifically provided for except freemen, and they being left on their old footing, were considered as sufficiently provided against. Could it be contended that a special exception was intended to be made in favour of Galway freemen, a class of voters with whom above all others occasionality had been found most particularly to prevail? If, indeed, the Legislature had in unequivocal language evinced such an intention in defiance of all experience, and the parliamentary policy of ages, all arguments drawn from general policy or intention must fall to the ground. But if the Committee doubted of the intention, or were not satisfied that the language

(*u*) Weymouth. Rogers on Elections, 93.

(*x*) Sections 26, 27, 31, 32, 33, 34, 35.

used conveyed such an intention, then they would at least hesitate before they established an exception, which in itself would be a complete anomaly, and be utterly at variance with the whole tenor and spirit of parliamentary law. On the 9th section of the Irish Act, then, the first question which arose was, whether the voter had a right to be registered? That section provided that "all persons who by reason of marriage, birth or service, or of any statute now in force, should be any time hereafter admitted to their freedom, should after such registration as was directed by that Act, but so long only as they should reside within the city, town or borough, or within seven statute miles of the place of election therein, have and enjoy such right of voting as fully and in like manner as if that Act had not been passed." By this section, the Legislature had remitted the parties to their ancient right under the 4 Geo. 4, c. 55, s. 32, annexing and superadding to it provisions requiring registration and residence. The ancient right, therefore, was not to be more unrestricted than before, and was only to be enjoyed as formerly. Could then William Grey register his vote? The 15th section of the Reform Act required each claimant to state in his notice the right in respect of which he intends to apply, and the nature of the qualification entitling him to be registered. Now Grey's only right to be registered was, that he had been a freeman resident for six months. The 19th section required the person declared to be entitled to verify his title by affidavit, and to take and subscribe the oath in Schedule C; that oath consequently was the test of the title to be registered, and it was clear that Grey ought not conscientiously to have taken it; it was to be taken by "resident freemen," and "40 *s.* freeholders;" and the form was, "I am a freeman, &c., having a right to vote at elections for the said city, &c. and that I am, and for the last six months have been, a

resident within the city;" six months a resident what? The answer is obvious, a resident freeman. The 9th section reserved the right to freemen "so long only as they shall reside;" residence therefore previous to admission was not the residence contemplated by this section; six months residence without freedom was as insufficient as six months freedom without residence; freedom and residence must be co-existent; to make either effectual there must be a combination of both; and it would be monstrous to contend, that a man not being a freeman residing in a city for five months and 27 days, and admitted on the 28th, his admission should relate back, and make him a freeman resident for six months.

2dly, Admitting the right of William Grey to register, still he had no right to vote. This right depended on the 32d section of the 4 Geo. 4, cap. 55, which was a re-enactment of the 35 Geo. 3, c. 29, s. 29, by which six months admission previously to voting were absolutely requisite, except in the excepted cases. But it would be said, that if Grey had a right to be registered he had a right to vote by the 29th section of the Irish Reform Act, by which it is enacted, "that every person who shall duly register as a voter within this Act at the first session for registering his vote within this Act, shall be thereupon forthwith entitled to vote." That branch of the section did not however apply to reserved, but to newly-created rights, the meaning of the words "as a voter within this Act," being, a voter created by the Act. The effect of the 9th section was, that a freeman (subject to the superadded provisions and limitations of that section) should in other respects "enjoy his right of voting as fully and in like manner as if the Act had not passed;" these words disconnect a freeman from every other part of the Act, and as he is to incur no further disabilities, he is not entitled to any further facilities to be found in other parts of that Act. But the great effort in this case would be to show that Grey fell within the exception

in the 35 Geo. 3, c. 29, s. 29, and the 4 Geo. 4, c. 55, s. 32; and that his right of admission under the Galway Act was equivalent to a right by servitude, and for this purpose, the preamble of the late Stamp Act (*y*) would be urged to show that the Legislature had put the two rights on the same footing. That Act, however, solely applied to the collection of the revenue, and ought not to be extended to cases not within its province. In *Buckmaster* v. *Harrop* (*z*), Sir William Grant says, "The revenue laws ought never to be held to operate beyond their immediate purpose to affect the property, and vary the rights of others."

But even if the Committee thought that the Galway Act did confer a sort of inchoate right, still if it were not a right distinctly in terms expressed in the exception, the argument could not prevail. In *Williams* v. *Evans* (*a*), where the defendant had been nominated a burgess on the 5th of October 1789, by the mayor and common-council of the borough of Carmarthen, under the provisions of their charter, as having been an inhabitant paying scot and lot within the borough, and having had a messuage and lands at 10 *l.* per annum for three years previous to his nomination, but was not sworn and enrolled until the 15th of February 1796, and voted at an election of a Member of Parliament on the 27th of May in that year, he was held liable to the penalty of 100 *l.*, imposed by the Durham Act. In that case it was contended, that the order for his admission had given him an inchoate right, and that only the form of the oath remained; but Lord Kenyon, in giving judgment, observed, "It is said that the defendant had an inchoate right before, but it must be remembered that he had no right whatever until the corporation chose to confer it on him by what is called an *ex gratiâ* admission, and that that was not consummated until the

(*y*) 2 & 3 Will. 4, c. 91. (*z*) 7 Vesey, 345. (*a*) 8 T. R. 216.

swearing in. But this inchoate right cannot assist the defendant, the rule "*expressio unius est exclusio alterius*" applies to this case, for the only excepted cases of inchoate rights are those by birth, marriage or servitude. Every part of the Act shows that the Legislature thought that the material time to be considered was the time of admission." And Mr. J. Lawrence said, "Even supposing the defendant had an inchoate right by the order for his admission, he could not vote at the election without incurring the penalties of the Act, for the instances of the exceptions in the proviso are of persons having an inchoate right. This is not one of them; and we cannot extend the exception to other cases that are not there mentioned." Indeed authorities need not be cited to establish so well known a principle of construction, that if a man rests upon an exception, he must bring himself within the words of it. Should it then be attempted, on the other side, to urge, that although not admitted by reason of servitude, the voter was admitted by a right equivalent to it, the very strong language used by Lord Kenyon and Mr. J. Lawrence would be a sufficient answer to such an argument. The Legislature had not thought fit to extend the exception to other inchoate rights than those specified: there was therefore no reason why other persons were to be brought within it. In *Symmers* v. *Regem* (*b*), which was a writ of error from a judgment of the Court of King's Bench in Ireland in *quo warranto* against several persons (among whom were Marshall and Grubb, two Galway Act men) to show by what authority they claimed to exercise the privileges and franchises of freemen, free burgesses, and common-councilmen of the town and borough of Galway, the case was reduced to two points, of which the first was, whether the defendants, Marshall and Grubb, were not entitled to

(*b*) Cowper, 505.

judgment, their title under the Galway Act not being denied. Lord Mansfield, in his judgment in that case, said, " It may happen that persons might apply at one time under the Act of Parliament when they had no title, and at the end of six months after they might have a very good one. If it should be so with respect to these two defendants, the question is still open. As to the office of freeman, there are two modes of acquiring that right, the one according to the constitution of the borough, by the election of the mayor, common-council and freemen in general assembly, agreeable to the rules of the borough and its charter; the other by special Act of Parliament, which consists and is complicated of many facts. This latter gives a *right only*, not a *title*, because the qualification of the claimants must be judged of. They ought to be tradesmen of certain trades mentioned, inhabitants within the borough for a year preceding, Protestants professed for seven years, and then they are to apply for their freedom. The Act therefore but gives a *qualification*. The mode of obtaining their freedom is by application to the mayor upon the facts before-mentioned; the mayor, therefore, *ex officio*, is to judge whether they are qualified within the Act or not. If they are, he must admit them; if they are not, he should reject them; and if he swears any one in without a qualification, such person may be ousted by an information." Lord Mansfield thus takes a distinction between *right* and *title*, which enables us to distinguish the right now insisted upon from the inchoate right of service. If an act or charter gives a freeman a title, he is to be admitted; if a right, he must claim to be admitted. Here it had been proved, that the corporation exercise a discretion, for they refused to admit a merchant's clerk, because he was not a trader. This, however, was not the case of an inchoate right. In *Williams* v. *Evans* the party had been nominated a burgess six years; he prayed to be admitted,

which was done of course, for after nomination his right became title, nothing more being required but consummation of it by admission, which was mere form: he was, however, held liable to penalties because he was not within the words of the exception; in that case, too, it was clear he did not fall within the spirit of the Durham Act, for he had been nominated for six years. We say, therefore, upon the authority of *Williams* v. *Evans*, that if Grey claims to be within the exception, he has not shown that his case falls within the words of that exception, for his title is neither by birthright, servitude or marriage; and that even if the express words of the exception are to be extended equitably in his favor, contrary to the authority of that case, still, as Lord Mansfield says, his is only a right, which is not equivalent to a title. Besides, it is to be observed, that the framers of the Irish Reform Act did not consider a right under the Galway Act as equivalent to a title by servitude; for if they had, it would have been unnecessary in the 9th section of the Irish Reform Act to have said "birth, marriage or service," "or of any statute now in force," as the cases contemplated by those latter words would have been comprehended under the previous word "service." With regard to the objection of occasionality at common law, the attention of the Committee must be directed to the facts of the case. One obvious and ordinary feature in occasionality is, that the freeman is not himself active in procuring his freedom, but it is procured by some other person, for some object that such person has in view; here we find Mr. Daly senior, from the time when he gave directions to the stamp distributor to procure stamps down to the time of payment, most active in endeavouring to maintain and strengthen that interest which he possessed in Galway; of the extent of which interest better evidence could not be adduced than the fact of his son, an officer of hussars, afterwards

the candidate, having been sworn in freeman, and elected burgess, common-councilman and mayor in one and the same day. Only 76 freemen in all were proved to have paid for their stamps. The question "Who paid for them?" we were endeavouring to sift, when stopped by the resolution of the Committee; our object having been merely, by the evidence thus sought to be obtained, to prove occasionality. Three of the drafts, however, were paid by Mr. Daly senior. The Committee would, doubtless, connect this with his first application about the stamps, and with the fact that his son was a candidate, and withdrew only at the eleventh hour. It was clear that William Grey did not apply for his stamp, it was equally clear that some other person did, and that person was Mr. Daly, the father of the person who was a candidate at the time the stamp was procured. The names in the corporation-book put in were derived principally from a book brought from the office of Mr. Dominick Doyle, the advertisements of whose notice respecting the registry were proved to have been paid for by Mr. Lynch, whose connexion with the other sitting member was established by the other advertisement, stating the names of their joint committee. The names of the freemen were entered in the book by Mr. Jeffery Morris, who was not a corporator, nor even had been a clerk to any person connected with the corporation, but was most active at the election as a supporter of the sitting members. Now all these facts tended to prove most conclusively, that these voters, and Grey amongst the rest, were occasional.

There was another point to which it was desirable that the attention of the Committee should be directed. The original entries of admission in the corporation-book contained no date whatever. It would, however, be said that the freemen were admitted on the 18th of September, because all the stamped admissions were so dated. But the deputy town-clerk had proved that no

stamps were issued before the 3d of October, and that the supply continued down to the 29th of that month; so that the date was evidently false. Now it was of the essence of admission that the day on which it took place should be known, for how otherwise could the period of six months, required by the 4 Geo. 4, be ascertained with the requisite precision? Then the admissions were signed by Mr. Edmund Blake, who therein stated himself to be deputy-mayor. No appointment, however, had been produced, nor any proof of appointment beyond the fact of his having been sworn in, an act which occurred immediately after the swearing in of the mayor himself. At the time too that Mr. Blake attached his signature, his office of deputy-mayor had merged into that of mayor, to which he was admitted on the 29th of September last.

A further objection might be raised to this vote: if William Grey was a Protestant and a weaver, he might have claimed at any period within the 14 years of his residence in the town. Under the Galway Act it was necessary that he should have come to reside in Galway in order to follow his trade. The words of the Act were clear: "And that all persons who *profess* themselves of any trade, mystery or handicraft that do or shall come to reside in the said town of Galway, in order to follow their respective trades, shall and are hereby declared to be free of the said town and corporation, and also of that company or corporation to which their respective trades belong, without paying anything for such freedom, and shall continue freemen of such company or corporation as long as they dwell in the said town, and no longer;" then followed the provisions for their being Protestants professed, for seven years before demanding their freedom, and for their taking the oaths. What trade did this person *profess* (according to the words of the Act) to follow? Why, that of a weaver; and it was proved that he was a pedlar; he did not

therefore come to reside in Galway in order to follow the trade which he professed. But laying aside these minor points in the case, and reverting to the more general objections he had first taken, he said, the other side were bound to satisfy the Committee, that the intention of the Act was clear, and the language in which that intent was conveyed explicit, before the Committee would forget the reasons of policy he had before urged.

Mr. Harrison for the sitting members:

With regard to the first objections that had been raised against this vote on the ground of occasionality, it was clear that the greater part of them were not applicable to a case, where an admission is obtained by virtue of an inchoate right. It would hardly be necessary to refer the Committee to cases previous to the Reform Act, in which mayors had held courts during the election itself, for the purpose of admitting freemen claiming their freedom by virtue of the inchoate rights of birth, marriage or servitude, and consequently entitled, under the exceptions both of the Durham Act and of the two Irish Acts of a similar nature, the 35 Geo. 3, and the 4 Geo. 4, to vote immediately upon their admission to it. In one election for the borough of Colchester, where there had been no contest for a considerable time before, upwards of 300 freemen were admitted during the first two days polling. In the reported case of the city of Worcester (*c*), not only were many persons admitted to their freedom during the election, but it was proved that their admission fees were paid for by the agent of the sitting member, Colonel Davies, and in some cases in a back room of the house where his committee sat, yet that election was held good. By that

(*c*) Cor. & Dan. 175, and see *Bristol case*, 1 Douglas, 260, *et seq.*; and *Drogheda case*, Cor. & Dan. 99.

decision two points might be considered as established; 1st, that there was no illegality in the payment of the expenses of admission of freemen, (as in the present case for the stamps,) by a candidate during an election; and 2dly, that the votes of the freemen so admitted were valid. The right moreover of persons possessing these inchoate rights to claim their admissions at the time of an election, for the purpose of voting at it, was so well established, that the municipal officer who refused to grant it to them had been visited with the displeasure of the House. In the *Great Grimsby case* (*d*), it was one of the charges for which a mayor was committed to the custody of the Serjeant-at-Arms, that he had refused, at a court held the day before an election, to admit to their freedom persons entitled to and claiming it. A criminal information could no doubt be brought in the King's Bench against an officer for similar conduct. Committees had in many cases put persons on the poll, whom it had been attempted to deprive of their rights by behaviour of this description. Thus in the *Wexford case* (*e*), all the rejected votes of persons entitled to their freedom in virtue of inchoate rights were put on the poll, proof having been given, that the stamps had been purchased, and a court for admission demanded. The parliamentary law on this subject was perfectly in accordance with that of the Courts in Westminster-hall. In *Austin* v. *Osborne* (*f*), where six persons had claimed to be admitted freemen, and to vote at the election of a mayor of Hythe, and had tendered the usual fine, but the mayor in office refused to admit them, in consequence of which the defendant was elected mayor, the Chief Justice Parker said, "the six voters excluded ought

(*d*) 2 Peck. 75.

(*e*) Hudson on the Elective Franchise, Appendix, p. 430.

(*f*) 1 Comyns, 240.

to be allowed;" and afterwards he continued, "the tortious refusal of the mayor does not make their votes void, for admittance is only a ceremony introduced and used for more order and regularity." If, therefore, it were established, that these voters came within the exceptions of the 4th Geo. 4, c. 55, the law and cases decided respecting occasionality did not apply to them. The Durham case in particular, which was decided according to the common law, could not govern the decision of a case which came within the exceptions of a statute passed in consequence of it.

To establish the point, that this class of voters came within the exceptions of the 4th Geo. 4, it would be necessary to shortly recapitulate the history of the rights of freemen in this borough. By the Irish Act, 17 & 18 Car. 2, c. 2, the Lord-lieutenant and council were empowered to make rules for the better regulating of corporations, and the electing of magistrates and officers therein (*g*). New rules, in pursuance of this statute, were made for Galway, but were superseded by the Galway Act, which seemed to have been passed in consequence of the violation of these rules. By that Act, the parties demanding their freedoms were to "take the usual oaths of freemen, and also the oaths of allegiance and supremacy, and make and subscribe the declaration against transubstantiation, before the mayor of the town, who is required to administer the same." The admission, therefore, was not left to the choice of the mayor, but he was required to administer the oath. The right and title of the voter was complete, but he must demand admission. In the case cited from Cowper, in the year 1776, there was a *quo warranto* against ten persons in respect of the general right as freemen, and two others, Galway Act men. From that case

(*g*) Cowper, 490; and Hudson on the Elective Franchise in Ireland, p. 138.

some passages only had been cited, while others, and important ones, had been omitted. Lord Mansfield there says, (*h*) "Marshall and Grubb claim to be freemen under the Act of Parliament, and not by *election*, and therefore, the issue as to them is an immaterial issue, being joined on the election." Mr. Justice Aston says, "as to the statute 4 Geo. 1, that statute gives a man only a *right* to the freedom of the town." What did that mean? why, that he might go to demand the oath to be administered, and be admitted. Mr. Justice Willes says, "my only doubt is as to Marshall and Grubb, for their right to be admitted freemen is different from the others; and if they have performed the requisites of the statute 4 Geo. 1, they are entitled to be admitted, and are by the Act declared to be free." Could any words be stronger than these, that persons under the Galway Act in this situation are "declared to be free," and entitled to their freedom?

In 1812 there was a contest for Galway, which led to a petition of appeal in 1814, on the right of voting, which was found to be in freemen simply (*i*), without a word of residence. A case respecting this right was tried on a writ of error before Lord Eldon, who had not given judgment before he left office. Finding these questions thus raised, non-residents had voted, and persons of the same description with those before the Committee had not for that reason claimed admission, their franchise being nearly useless, because they might at any time be overwhelmed by the number of non-resident freemen created. In fact about 1,700 or 1,800 such freemen were made in 1826. The facts of the case were now materially altered, the Reform Act having put an end to non-residence. When the Catholic Emancipation Act passed, it became necessary to apply to Parliament to give to the Galway voters the same

(*h*) Cowper, 502. (*i*) See note (*f*), *ante*, p. 305.

benefits as persons enjoyed under that Act in other towns, there being in that Act no repeal of the restrictive clause in favor of Protestants. For this purpose the 1 & 2 Will. 4, c. 49, was passed, by which, after reciting the 4 Geo. 1, c. 15, and the 10 Geo. 4, c. 7, the provision of the former Act requiring persons claiming their freedom to have been professed Protestants for seven years, was repealed, and Roman-catholics were empowered to take up their freedom on taking and subscribing the oath set forth in the 10 Geo. 4, c. 7.

This Act was also important on account of the recognition it contained of the right under the Galway Act. Such then was the situation of the inhabitants of Galway in 1831. Until this last statute passed, Roman-catholics could not have been admitted: subsequently doubts were entertained whether they were entitled to admission on paying the stamp on an inchoate right, or on an *ex gratiâ* admission, the latter being three times the cost of the former. To settle that question, a Bill was introduced into the House. During all this time could it fairly be objected that these persons had been guilty of laches in not earlier claiming their freedoms? The Bill became a law (*k*) on the 7th of August 1832. It was entitled "An Act to explain doubts that have arisen respecting the stamp duty payable by freemen of corporations entitled by virtue of trade and residence in the corporate towns and counties of cities and towns in Ireland;" and after reciting that by the 56 Geo. 3, c. 56, the stamp duty payable by freemen of corporations when their admission was in respect of birth, apprenticeship, or marriage, was 1 *l.*, and where the admission was on any other ground, was 3 *l.*; and reciting "that at all times since the enactment of the said last-mentioned statute, persons who by virtue of being engaged in any trade, mystery, or handi-

(*k*) 2 & 3 Will. 4, c. 91.

craft, were by any charter or statute entitled to claim, or to take up the freedom of any corporation or company in Ireland as of right, had been universally deemed, reputed and considered as persons claiming or taking up freedom by right of apprenticeship, and had been uniformly admitted to their freedom on payment of the duty of 1 *l.* each; but that doubts had lately been entertained on the subject, and that for the better collection of the revenue, *and the more liberal enjoyment of the said franchise or privilege,* it was expedient that the said doubts should be removed," it proceeded to enact, that persons, "who in virtue of being engaged in any trade, &c. were or should be entitled to claim or take up the freedom of any corporation in Ireland as of right, should be admitted to such freedom upon payment of the same duty as all other freemen by right are admitted to their freedom, that is to say, on payment of the duty of 1 *l.* only." This statute was a parliamentary exposition of the situation in which these persons stood; it placed them in the situation of persons claiming "as of right." The objection of occasionality applied only when votes were made by a particular person, or on a particular occasion; there the law had said that no person so admitted *ex gratiâ* should exercise his right until six months after admission. This was not the case with the vote now in question. Wm. Grey had been shown to be admitted by service, and the Stamp Act placed him on the footing of a person claiming by right. He might have applied at any time. The facts, taking the dates of the Acts of Parliament into consideration, were all in one course.

Much had been said about the number admitted, and the time of their admission. Was there any wonder in all this? The Act (2 & 3 Will. 4, c. 91,) passed on the 7th of August. The election and admission of freemen took place a month after. The 18th of September was the last day on which any were sworn. The admis-

sions were dated the 18th, and properly so dated, for the swearing was the admission, and the admissions might under the Indemnity Act have been stamped at any subsequent time. The deputy-mayor was bound to attach his signature in the character which he held at the time of swearing the freemen; no irregularity, therefore, could be charged against him on that account. The claims were all considered by the 18th of September, because the 19th was the last day for serving notices to register. Had the mayor refused to admit the freemen, he would have been criminally culpable. The case of *Williams* v. *Evans*, relied on on the other side, was the case of a person admitted *ex gratiâ*, and therefore had no application to the present.

Having thus gone through the cases cited, and observed upon the general arguments, seemingly introduced to confound rather than to elucidate the question, he would now address himself to the provisions of the Irish Reform Act, as applicable to the vote in question. By the 9th section there was an express saving of the rights of them who "by reason of birth, marriage or service, or of any statute now in force, shall be at any time hereafter admitted to their freedom in any city, town or borough, sending a member or members to Parliament." It was then immaterial what the voter was called, he being a person admitted by virtue of a statute now in force. What was the qualification necessary to give the right to vote to this person? that he should be admitted under the statute, and should reside. It had been contended, however, that residence and admission must be co-existent. But there was no authority for that position to be found in the Act. The question was simply, whether the party had acquired a right to vote? Here the voter had a right under the Galway Act, and therefore, if registered, he would be entitled to vote so long as he should reside. The 9th section then contained a provision as to honorary free-

men, who were there, as in the 35th section of the English Act, the object of exclusion. That provision, however, could have no reference to freemen admitted under the Galway Act. The 29th section provided, "that every person who shall duly register as a voter within this Act, at the first session for registering his vote within this Act, shall be thereupon forthwith entitled to vote." Here the Legislature had classed this voter as a statutory one, and he was therefore forthwith entitled to vote. The 13th section, which attached the condition of six months' possession to the property which is to give a qualification to vote, was in favor of the voter, for no such condition was attached to freemen, and persons who claimed their freedom by virtue of birth, marriage or service, were admitted to vote at any time.

Mr. Harrison was here referred by the Committee to the oath in Schedule C. No. 9, which is headed, "Oath to be taken by resident freemen, and 40 *s.* freeholders, whose rights are saved;" and by Mr. Rogers, to the 6th section, by which no condition of residence is imposed on the 40 *s.* freeholders, from whence he inferred that the residence in the oath applied to freemen only.

Mr. Harrison:

The oath did not in terms provide, that the party should have resided six months as a freeman. The 9th section had no reference to length of residence, the words being "but so long only as they shall continue to reside," which could not be held to establish the necessity of admittance six months previously to the election. The effect of those words was, the claimant might vote as soon as he had been registered, and so long as he should reside. Residence was a personal qualification, applying to all classes of voters.

With respect to what had been said by Mr. Serjeant Merewether, as to the non-residence of the mayor; the

Galway Act undoubtedly required 12 months previous residence by the mayor; but this had been found inconvenient, and was therefore dispensed with by the Newtown Act (*l*).

Mr. Rogers:

Cases had been cited, to which he was entitled to reply, but he did not think it necessary that he should do so. Of the *Worcester case* (*m*), it was sufficient to say, that the question of occasionality was not raised there; the only question in that case being, whether the payments were made on a corrupt agreement or not. That case, therefore, did not apply.

The Committee resolved, That the vote of William Grey was not a good vote.

An adjournment then took place until the following day, to enable Mr. Harrison to ascertain how far the decision affected the case of the sitting members; and on that day Mr. Harrison abandoned the seat for Mr. Maclachlan. The number of freemen ordered to be struck off the poll on either side was 688.

The Committee resolved, that Andrew Henry Lynch, Esq. was duly elected.

That Lachlan Maclachlan, Esq., was not duly elected.

That Martin Joseph Blake, Esq. was duly elected, and ought to have been returned.

That neither the petitions nor the opposition to them appeared to be frivolous or vexatious.

That the Committee have also to inform the House, that they have altered the poll taken at the election, by striking off the names of Wm. Grey, &c. (688 names,) as not having had any right to vote at such election.

(*l*) 21 Geo. 2. Ir. c. 10.

(*m*) The authority of that case has been questioned by Mr. Justice Alderson in the late case of *Bayntun* v. *Cattle*, 1 Moody & Robinson, 268.

CASE XVIII.

CITY OF COVENTRY.

The Committee was appointed on the 26th day of March 1833, and consisted of the following Gentlemen:

Sir Oswald Mosley, Bart. M. P. for North Staffordshire, (*Chairman*).

John Henry Seale, Esq. M.P. for Dartmouth.
James Winter Scott, Esq. M. P. for North Hants.
James Milnes Gaskell, Esq. M. P. for Wenlock.
Samuel Adlam Bayntun, Esq. M. P. for York City.
Aaron Chapman, Esq. M. P. for Whitby.
Mark Phillips, Esq. M. P for Manchester.
The Hon. H. Thos. Stanley, M. P. for Preston.
George Richd. Robinson, Esq. M. P. for Worcester.
Sir Geo. Grey, Bart. M. P. for Devonport.
Wm. Edward Powell, Esq. M. P. for Cardiganshire.

Petitioners:—Electors.
Sitting Members:—Edward Ellice and Henry Earle Lytton Bulwer, Esqrs.
Counsel for the Petitioners:—Mr. Crowder and Mr. Robert Thomson.
Agents:—Messrs. Sherwood & Thorpe, and Messrs. Trowton & Wilmot, Coventry.
Counsel for the Sitting Members:—Mr. Harrison, Mr. Follett, Mr. Rogers and Mr. Cockburn.
Agent:—Mr. Beavan, of Sackville-street.

THE petition stated, that at the last election for the city of Coventry, Thomas Bilcliffe Fyler and Morgan Thomas, Esqrs. and the sitting members, were candi-

Rioting during the greater part of an elec-

tion will not avoid the election unless it is shown that the return has been affected by it.

dates; that previous to, and during the election, riots of the most disgraceful, tumultuous and violent description were excited and created by the partisans of the sitting members, to intimidate and prevent the electors from supporting or voting for the other candidates, and that the sitting members encouraged and countenanced those riots; that on the 8th of December, being the day of election (nomination), a great mob, consisting of persons not inhabitants of Coventry, or having a right to vote for that city, accompanied by the sitting members, publicly paraded the streets, and committed divers gross outrages and assaults on electors in the interest of Messrs. Fyler and Thomas, and on many other inhabitants, and that most of the electors in the interest of Messrs. Fyler and Thomas were prevented by fear from appearing at the hustings, and that Messrs. Fyler and Thomas themselves were assaulted and beaten on their way from the King's Head Inn to the hustings, and many of their friends were beaten and wounded, and their lives endangered, and were thereby prevented from going to the place of election, until the mayor and magistrates, accompanied by a great number of special constables, with much difficulty escorted them there; that on the 10th of December, the day appointed for commencing the poll, the most riotous, tumultuous and brutal proceedings, utterly incompatible with the freedom of election, took place at the hustings, in the presence of the sheriffs, who, though repeatedly requested to prevent these outrages, and afford protection to the voters, and also to adjourn the poll, refused to interfere; that by means of such outrages and riots the electors in the interest of Messrs. Fyler and Thomas were prevented giving their votes, whilst those in the opposite interest had free access to the hustings, and were allowed to poll without injury or molestation; that Messrs. Fyler and Thomas, being unable to obtain a free and fair election, in consequence resigned the con-

test; that at the time Messrs. Fyler and Thomas resigned, the sitting members had not polled a majority of electors; that the petitioners believed that if all the electors desirous to support and vote for Messrs. Fyler and Thomas had been permitted to give their votes without fear, intimidation or violence, Messrs. Fyler and Thomas would have obtained a majority of votes; "that in consequence of the riots the petitioners had no opportunity of requiring Mr. Bulwer to swear to his qualification in the manner prescribed by the statute respecting the qualification of Members of the House of Commons; and that the petitioners verily believe that Mr. Bulwer *has* not the requisite qualification or estate to be capable of sitting or voting in the House." It prayed that the return might be declared void.

The evidence adduced by the petitioners fully proved the allegations in the petition as to the riots and attack on Messrs. Fyler and Thomas on the day of nomination, and as to their being escorted to the hustings by the mayor and constables, after having previously sent a letter to the sheriffs, protesting against the proceeding to a nomination until measures had been taken for their protection. It was also proved, that on the day of polling, about ten o'clock in the morning, the party of the sitting members obtained possession of the hustings after a short but severe battle, in which they succeeded in driving away Messrs. Fyler and Thomas's party, who had previously occupied them. Several applications were then made on behalf of Messrs. Fyler and Thomas for an adjournment of the poll to the sheriffs, which they refused to comply with. Many electors (*a*) also came forward as witnesses, and deposed that they were beaten and prevented by the mob from voting, as they had intended, for Messrs. Fyler and Thomas; and others (*b*)

(*a*) Printed Minutes, pp. 74, 87, 109, 111, 126, 158, 161, 175, 177, 185.

(*b*) Ibid. pp. 49, 53, 60, 94, 157, 158, 186.

that they were stripped of their clothes, and severely beaten, after having done so. It was also proved, that a large body of persons had been hired to fight on the part of the sitting members; but it appeared, on cross-examination, that others had also been hired for the same purpose by persons in the opposite interest. About three o'clock in the afternoon Messrs. Fyler and Thomas resigned. The numbers at the close of the poll were:

Mr. Bulwer - - -	1,613
Mr. Ellice - - -	1,607
Mr. Fyler - - -	371
Mr. Thomas - - -	366

The total number of names of electors on the register was 3,285, and of these 1,989 polled.

The counsel for the petitioners contended, that the freedom of election having been violated by the riot on the day of polling, the election must be held to be void (c). The counsel for the sitting members, on the other hand, contended that the election was good, unless the riot was of such a nature as to affect the return, in support of which they cited the determination and proceedings before the Coventry Committee of

(c) The following are among the cases to be found in the Journals on the subject of riots at elections:

Pontefract (1624), 1 Journ. 707, and Glanville, 143.

Southwark (1702), 14 Journ. 24; the petition of a candidate. There the polling was proved by a constable to have been pretty clear, though the fighting was not far from it. This witness had been called upon to keep the peace, "but he durst not venture among them." This was on the second day; and the poll was closed sooner than it had been on the preceding day; on the third day the petitioner protested against the proceedings, and went away. Several witnesses swore they never knew a quieter election for Southwark.

Coventry (1706), 15 Journ. 276, the petition of electors. It was proved that the constables were beaten, and were unable to keep the peace, and that one was killed; that voters were driven back from the poll and beaten; that some, after they had polled, had their clothes torn. Several records of convictions for riot, and for assaults and batteries were produced. A great number of voters were proved to have polled for each of the candidates.

1827 (*d*); and to prove that it was not so, they proposed, by the cross-examination of the witnesses for the petitioners, and by fresh evidence of their own, to show, that

Coventry (1722), 20 Journ. 22 and 1 Heyw., 374, the petition of the mayor, sheriffs, aldermen and freemen of Coventry, complaining of riots. The resolution of the Committee (ibid. p. 60) was, "That there were notorious and outrageous riots, tumults and seditions, at the late election of citizens to serve in Parliament for the City of Coventry, in defiance of the civil authority, and in violation of the freedom of elections, caused by the agents and friends of the petitioners, and several persons were committed to the custody of the Serjeant at Arms.

Westminster (1722), 20 Journ. 43; there the petition stated, that by means of the outrages and violences at the election, a very great number of housekeepers remained unpolled.

Coventry (1736), 22 Journ. 768, there the riot alleged in the petition was admitted, but the counsel for the sitting members denied, that the riot was occasioned by the members or the magistrates.

Westminster (1741), 24 Journ. 37, where the high bailiff was committed to the custody of the Serjeant at Arms.

Pontefract (1768), 32 Journ. 68, where the House having resolved "that the counsel be confined to proceed upon the allegations of the said petitions, which complain of the freedom of the said election being disturbed by riots, the counsel for Sir Rowland Winn, one of the sitting members, said he should give the House no further trouble. The other sitting member did not appear by counsel.

N. B. In each of the above cases the election was declared void.

Morpeth (1774), 35 Journ. 83, and 1 Dougl. 147, where the bailiffs having been compelled by the threats of a mob to insert the name of Mr. Eyre, instead of that of Mr. Byron, in the return, after they had declared Mr. Byron duly elected, the return was ordered to be amended accordingly.

Coventry (1781), 38 Journ. 8, 104; there the sheriffs reported, that they could make no return by reason of riots. It was proved that being unable to return the candidate they wished, the sheriffs themselves created the riot in order to prevent the return of Colonel Holroyd, who was seated on petition. The sheriffs were committed to Newgate. See the resolution, 38 Journ. 295.

Nottingham (1802), 58 Journ. 16, and 1 Peck. 85, where the election was declared void.

Coventry (1827), 82 Journ. 20, where the election was not avoided. See note (*d*) *post*.

Galway (1827), 82 Journ. 61, where the riots were proved to have been of the most alarming description. The Committee seated the petitioner, ibid. 407, and made a special report as to the rioting.

(*d*) Coventry Minutes, printed in Vol. 4 of the Parliamentary Papers for 1826-27. The report of the Committee in that case was, that Mr. Fyler

had all the unpolled electors on the register, capable of voting, polled for Mr. Fyler and Mr. Thomas, the sitting members would have had the majority. On the first attempt to enter upon this line of defence by the cross-examination of one of the petitioners' witnesses, as to the number of registered voters remaining unpolled, Mr. Crowder objected to the question; and after a short argument between him and Mr. Rogers, the Committee determined, that at that stage of the proceedings the

and Mr. Heathcote were duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious; they also resolved, that it appears to the said Committee, that during the late election of members to serve in Parliament for the city and county of the city of Coventry, riotous and tumultuous proceedings took place in the said city, and that grievous outrages and assaults were committed on the persons of several electors and others during the said election.

That it appears to the said Committee, that the mayor and magistrates of the city and county of the city of Coventry were culpably negligent of their duty, in taking no effectual measures to preserve the peace of the city during the said election.

That it appears to the said Committee, that the conduct of James Weare, the mayor, was more especially improper and unbecoming the dignity of his office.

That it appears to the said Committee, that outrageous and riotous proceedings have frequently taken place at former elections for members to serve in Parliament for the city of Coventry. It appearing to the said Committee, that the mayor, recorder and aldermen have, by charter, an exclusive jurisdiction within the city and county of the city of Coventry, and the Committee thinking it highly expedient to provide some better security, than is likely to be provided by the magistrates of Coventry to preserve the peace within the said city and the county thereof, and to prevent a repetition of the same disgraceful scenes, Resolved, that it is the opinion of this Committee, that the House be moved for leave to bring in a Bill to give to the magistrates of the county of Warwick concurrent jurisdiction with the magistrates of the city and county of Coventry.

That the evidence adduced before this committee be laid before the House for its consideration.—*Journals*, vol. 82, p. 297.

A Bill was, in pursuance of this recommendation of the Committee, brought in by Sir John Wrottesley, their Chairman, to give concurrent jurisdiction to the magistrates of Warwickshire. It passed the Commons on the 18th of June 1827, but Parliament shortly after was prorogued, and it was carried on no further. For the debates on it, see Hansard's Parliamentary Debates, vol. 17, N. S., pp. 974, 1191, 1341.

questions should not be put. Afterwards (*e*) Mr. Harrison, on the part of the sitting members, called a witness to prove, that one person, whose name was on the register, was dead at the time of the election.

Mr. Crowder objected to evidence of this kind being received. The question before the Committee was, whether there was such a riot and disturbance that voters were prevented from coming to the poll? Was it any answer to a case already proved of this description, that a certain number of persons only remained unpolled? How many of those who had already given their votes, might have changed their minds under the influence of force and intimidation? How could an election be valid where, in violation of the first principles of our constitution, the electors were not permitted to give their votes? The only proof of who was the member chosen by the majority of the voters, was from the votes appearing on the poll-books. Here many of those votes could not be given; how, then, was the Committee to judge of the manner in which they would have been bestowed had they been permitted to be tendered? But to the particular evidence that was offered, there was another objection: the register was the legal evidence of the persons entitled to vote, and if it was proposed to dispute its correctness, objections under the provisions of the 9 Geo. 4 ought to have been put in to each individual, whose name it was proposed to remove from it. No list of objections had, however, been delivered in this case, and the petitioners were consequently entirely ignorant whom it was proposed to strike off the register, and unprepared with evidence to meet any case the sitting members might think fit to bring forward.

Mr. Harrison, in support of the question, urged, that similar evidence was adduced, without any objection having been made to it, before the Committee in

(*e*) Printed Minutes, 203.

1827, where there had been a continued riot during the 15 days the election lasted (*f*). There was an allegation in the petition, that Mr. Fyler and Mr. Thomas would have obtained a majority, had there been no fear or intimidation exercised upon the electors. Surely the sitting members ought to be allowed to contradict this statement, by showing that they would in any case have had a majority. The sole question was, in reality, whether the return would have been different if there had been no riot? The evidence was not offered with a view to impeach the register, or to dispute the title to vote of any man who had polled, but solely to show the number of persons capable now of voting, and for that object it was not necessary to deliver in any list of objections.

Mr. Crowder in reply:

The questions put before the former Committee were obviously irregular; they were not objected to probably from the absence of the leading counsel, or for some other reason which it is impossible now to learn; but at any rate their irregularity was never pointed out to the

(*f*) Coventry Minutes, 1827, p. 227. Evidence of Mr. Henry Pearman. *Question*, "From the attention you have paid at different elections, are you acquainted with the number of freemen so as to be able to form a probable conjecture what the number was at the last election? *Answer*, "According to the best of my knowledge and belief the number would not exceed 3,100. —*Q.* There have been a considerable number of freemen made since that time? *A.* A considerable number, but what number I cannot tell. —*Q.* From the calculations which have been made, will you state to the Committee, how many unpolled freemen remained in Coventry when this polling finally closed? *A.* From returns sent to me, the calculation was about 170 capable of polling; 68 paupers and six alms men, making 74, who could not poll.—*Q.* Of these 170, were there any considered as doubtful votes? *A.* 29.—*Q.* How many were returned out of that number as favorable to Mr. Heathcote? *A.* 64. —*Q.* How many as favorable to Mr. Fyler? *A.* 54.—*Q.* How many favorable to Mr. Ellice? *A.* 89.—*Q.* How many favorable to Mr. Moore? *A.* 71."

attention of the Committee, and no decision was therefore made upon them, that could be urged as a precedent. The point to be determined was, whether there had been a legal election or not? If the electors had not been allowed to vote, there was no legal election, and the return ought to be avoided. Committees had in many cases held elections valid, where returning officers had omitted to comply with the directions of the statutes in matters of minor importance, but it would be contrary to law and to common sense to hold the interruption of the liberty of voting a matter of no consequence, or to support the validity of an election where that liberty had not been given.

The Committee decided (*g*), that in the then present stage of the proceedings, the counsel for the sitting members ought not to go into evidence as to the deaths and other disqualifications of the parties whose names appeared upon the register. The counsel were also informed, that the Committee considered it desirable, that the counsel for the sitting members should first direct their evidence to prove, that the poll was unobstructed towards the latter part of the day.

Evidence was then given to show, that at the latter part of the day there was full liberty for the electors to vote for Messrs. Fyler and Thomas, and it appeared from the poll-books, that many of them did so at that time. In the course of this inquiry, Mr. Crowder objected to the reception of the evidence of one of the witnesses, because he had subscribed towards the expense of defending the return of the sitting members. The Committee over-ruled the objection. The arguments were similar to those used in the *Southampton case* (*h*).

Mr. Harrison then proposed to call witnesses to prove, that the parties who commenced the disturb-

(*g*) Printed Minutes, 203. (*h*) Butt's case, *ante*, p. 220.

bances were connected with the petitioners, and instigated by them. The Committee, however, after deliberation, informed him that they considered that it was already in evidence that strangers were in the rallies on both sides, and that it did not appear to them of any importance to prove by whom the disturbances were commenced. Mr. Harrison then stated, that he would not, after that intimation, go into that part of the case. Mr. Crowder then replied, on the part of the petitioners, upon the case, as far as regarded the riot.

The case upon the qualification of Mr. Bulwer, was then entered upon.

The final resolutions of the Committee were, that both the sitting members were duly elected; and that neither the petition nor the opposition to it were frivolous or vexatious. They also passed the following additional resolutions, which were reported by their Chairman to the House: "That it appears to this Committee, that during the late election for members to serve in Parliament for the city and county of the city of Coventry, riotous and tumultuous proceedings took place in the said city, and that serious outrages and assaults were committed on the persons of several electors and others during the said election.

"That it appears to this Committee, that at the late election, the sheriffs of the city of Coventry caused to be erected only one booth, divided into 10 compartments, for taking the poll at such election.

"That it appears to this Committee, that it would have been expedient to have erected different booths in several places for taking the poll at the said election, and that owing to the want of such an arrangement, great opportunity was given for riot and disturbance.

"That it appears to this Committee, that the magistrates of the city of Coventry have an exclusive jurisdiction within the said city and county of the said city.

"That it appears to this Committee, that although disturbances were apprehended at the late election of members to serve in Parliament for the city of Coventry, no adequate or effectual measures were adopted for preserving the peace of the city, or protecting the persons of the electors from violence during the said election.

"That it appears to this Committee, that the conduct of the sheriffs of the city of Coventry was highly culpable, in not taking sufficiently prompt and efficient measures for securing order and regularity during the late election (*i*)."

April 4th.

The question of Mr. Bulwer's qualification being now entered upon (*j*),

The want of an express allegation of ineligibility, will not prevent inquiry into the qualification of a member.

Mr. Harrison objected, that the allegation in the petition did not let the petitioners in to objections against Mr. Bulwer's qualification. The 2d resolution of 1717 (*k*), provided for the delivery of a particular, where the qualification was expressly objected to. When the petition was presented, it was matter of grave doubt, whether it was necessary for Mr. Bulwer to deliver in any particular; he was, however, advised to do so; but his doing so had not precluded him from making objection to the proposed investigation.

The Middlesex petition in 1805 (*l*) contained an allegation "that at the time of the election and return the sitting member was not the eldest son or heir apparent

(*i*) The Committee summoned the mayor and sheriffs to give evidence. The evidence of Mr. Sheriff Cramp is contained in pp. 190 to 202 of the printed Minutes.

(*j*) An application made by Mr. Cockburn, after Mr. Crowder's general opening, to have the question of qualification first considered, as, if that were decided against Mr. Bulwer, he would be saved the expense of watching the further proceedings, was, after argument, refused by the Committee, who determined that the general charge of riot should be first entered upon. In the *Corentry case*, 1 Peck. 94, the question of qualification of one of the members was first taken, though the petition was against both.

(*k*) *Ante*, p. 25.

(*l*) Hands on Election Petitions, p. 149.

of a person qualified to serve as a knight of the shire;" and then had not any estate of the annual value of 600 *l.*, "whereby the said election and return of the said G. B. M. were and are void." The Oakhampton petition contained a similar allegation of ineligibility.

In the *Coventry case* (*m*) the allegation was, that the sitting member "was not at the time of the said election, nor is at this time, *possessed* of such an estate in law or equity, in lands, tenements and hereditaments, as is sufficient to qualify him to serve in Parliament as a citizen for the said city." In the Lincoln petition, presented this session, but not then heard, it was specifically stated, that the sitting member "was not the eldest son or heir apparent of any peer or lord of Parliament, nor of any person qualified by law to serve as a knight of the shire, and that he was not seised of an estate of 300 *l.* a year." The allegation here was too loose and vague; it was neither preceded nor followed by any allegation sufficient to make it an express objection; the petition contained no prayer referring to it, and no consequence was stated to have arrived from it, which ought to have been stated, and not the objection only.

Mr. Crowder:

The argument on the other side appeared to be this, that the words used did not express the objection. A stronger allegation of fact could hardly be conceived than, that "the petitioners verily believe Mr. Bulwer has not the requisite qualification." The petitioners could not know to a certainty that he had not the necessary qualification. Where the facts had not been within the knowledge of a deponent, then in his affidavit he always swore to his belief. This was

(*m*) 1 Peck. 94. See Rogers on Election Committees, p. 27, as to this case; and the *Colchester case*, 1 Lud. 415, where an inferential allegation of incapacity was held sufficient.

like the case of a witness, who could not speak to a fact unless within his knowledge. The object of the standing order was, to give notice to the member that his qualification was objected to, and to enable him to prove it to be good. Mr. Bulwer had delivered in a statement of his qualification. The Bath petition was in the same form: the language there was, "And your petitioners have reason to believe, and do believe;" here the words were "the petitioners verily believe." The standing order, therefore, had been complied with. Before that order, the objection might have been gone into without notice: the standing order was passed for the benefit of the member. He submitted that the petitioners had stated all that was necessary; a vague surmise, he admitted, would not have been sufficient, but the petitioners had in this case used the strongest language they were entitled to use.

Mr. Harrison:

There was no allegation in the petition similar to the following, which was to be found in that of Bath: "that the said John Arthur Roebuck was and is, for want of such qualification, wholly disabled, incapacitated, ineligible and disqualified to appear as such candidate, or to be elected or returned as a member to serve in Parliament for the said city." Affidavits had been referred to, but they furnished a bad analogy, the law as to them differing much from that with respect to witnesses. In an indictment the charge must be positive; so should it be here.

In every one of the precedents he had cited, there was an express allegation, that the member was ineligible. The petition before the Committee did not allege ineligibility, and the allegation as to the riot had nothing to do with the question, for any two electors might have required the qualification to be sworn to afterwards (*n*).

(*n*) 9 Anne, c. 5, s. 5.

It was erroneously supposed, on the other side, that the onus lay upon the member of proving the qualification to be good; it was incumbent on the petitioners to show it to be bad (*o*).

The Committee were unanimously of opinion, that the allegation was sufficient to call upon Mr. Bulwer to produce his qualification.

Parole evidence is admissible to prove that, in substance, the standing order has been complied with.

Mr. Crowder then submitted that the standing order No. 3 (*p*) had not been complied with; the names and places of abode of the witnesses to the conveyance and payment not having been stated in the particular. They were described as "Thomas Nicholson, and also John Dunning, of Youngsbury, in the county of Hertford, bailiff to the said Benjamin Giles King." The question for the Committee to determine was, whether the omission was of importance? All Committees required the standing orders to be strictly adhered to. The object of requiring the place of abode to be stated was, that the witnesses might be got at, for it was often very important to have the witnesses to deeds, in order to ascertain how far they were *bonâ fide* executed. In the *Bath case* (*q*) it had been found necessary to examine both the witnesses.

Mr. Harrison.—The words "bailiff, &c." were mere surplusage. If they were struck out, the place of abode of both the witnesses would be found to be stated. Surely the introduction of these words could not have misled the petitioners, who were bound to show, that the description was so vague as to lead to that result. In the *Bath case*, he had unsuccessfully endeavoured to show he had not received from the particular the information he was entitled to have.

(*o*) *Coventry case*, 1 Peck. 93. *Colchester case*, Minutes, 1820; and the cases of *Bath*, *Lincoln*, *Carlow*, and *Dover*, of this session.

(*p*) *Ante*, p. 25.

(*q*) *Ante*, p. 24.

Mr. Crowder in reply:

The standing orders had always been strictly enforced by the House in questions on private Bills, whatever the amount of property involved, and he presumed the rule would not be relaxed with respect to members who failed to comply with them. It had been attempted, on the other side, to induce the Committee to reject the words "bailiff, &c." as surplusage. He submitted that they ought not to be so rejected, the rule of pleading being only to reject allegations which were added, unconnected with the sense of the main allegation (*r*).

The Committee permitted evidence to be given of the residence of Mr. Nicholson at Youngsbury. It was proved by Mr. Beavan, the agent for the sitting members, that Mr. Nicholson had a room at Youngsbury, the seat of Benjamin Giles King, Esq., where he had been for some time engaged in arranging the private papers of his client; that he was at Youngsbury when the deed was signed, and also when the particular was delivered in, but that he had left this country about the 10th or 12th of February.

The Committee resolved, that sufficient notice had been given to the petitioners of the residence of Mr. Nicholson.

The deed of grant of a rent-charge of 310 *l.* a year, for the life of Mr. Bulwer, was then put in (*s*).

Mr. Crowder required proof of the deed to be given by the production of Dunning, the other subscribing witness.

Mr. Harrison insisted, that it was not incumbent on him to call the witness. In the *Bath case*, the attest-

(r) 1 Chitty on Pleading, 293,525.

(s) The deed contained no powers of distress and entry, but was simply a grant of a rent-charge to be payable out of the lands mentioned in it, with a covenant for payment by Mr. King, and a covenant for further assurance.

ing witnesses were called by the petitioners. In no instance was it ever contended that the member should prove his qualification (*t*).

The Chairman, addressing Mr. Crowder, observed, that the object of the standing-order was to give an opportunity to the party disputing the qualification, to call the attesting witnesses to the deed of conveyance.

A witness was then called, for the purpose of proving that he had endeavoured, both at the Albany and at Youngsbury, to find Mr. Benjamin Giles King, the grantor of the rent-charge, but without success. At Lady Puller's, the sister of Mr. King, it was believed that Mr. King was at Calais. On his cross-examination, this witness stated, that his first inquiry at Youngsbury was made on the 26th of March, and that Mr. King had been there the night previous. He had seen Dunning, one of the attesting witnesses to the deed, on Saturday, the 28th of March, but had not served him with a summons.

The will of the late Nathaniel Giles, Esq., the uncle of Mr. King, was then proved by one of the attesting witnesses. It contained a devise of all the testator's "freehold and copyhold manors, &c., at Pebmarsh, &c., in Essex," together with other property, "to the use of Benjamin Giles King, his heirs and assigns for ever, *with the wish and in the hope* that he will, as occasion may arise, sell and dispose of all such parts thereof as may be necessary, for the purpose of purchasing lands and property contiguous to, or convenient and desirable for the increase and improvement of the Youngsbury estate," in which Mr. King had only a life estate given to him by the will. The rent-charge was granted, and made payable out of the lands at Pebmarsh.

(*t*) See the *Dover case*, post.

Mr. Crowder for the petitioners:

The estate devised by the will is a trust estate. Words importing "wishing and hoping" make the devisee a trustee for the purpose referred to. In *Harland* v. *Trigg* (*u*), the devise was, of all other the testator's leasehold estates, to his brother John Harland for ever, "hoping he will continue them in the family;" there it was not disputed that a trust was not raised, but the word "family" was considered too vague a term. In *Parsons* v. *Baker* (*x*), the gift was, to the testator's nephew in fee, "not doubting, in case he should have no child, but that he will dispose and give my said real estate to the female descendants of my sister, in such part or parts and manner as he shall think fit, in preference to any descendant in his own female line." The decision of Sir William Grant was in favor of the sister's children. In *Harding* v. *Glynn* (*y*), the testator bequeathed to Elizabeth his

(*u*) 1 Bro. C. C. 142.

(*x*) 18 Ves. 476.

(*y*) 1 Atk. 469: the rule is, in Mr. Sanders' note there, stated to be, "that any words of a testator intimating a *request, wish, desire, recommendation*, &c., are sufficient to create *a trust*, provided there be *certainty* of the *gift*, and of the *object* to be benefited thereby. See the cases there cited, and those referred to in note 98, to *Bull* v. *Vardy*, 1 Ves. 272; *Paul* v. *Compton*, 8 Ves. 380; *Morice* v. *Bishop of Durham*, 10 Ves. 536; *Dashwood* v. *Peyton*, 18 Ves. 41; *Mahon* v. *Savage*, 1 Scho. & Lef. 111; *Cary* v. *Cary*, 2 Scho. & Lef. 189. In *Sale* v. *Moore*, 1 Sim. 534, the testator gave an annuity to one of his next of kin, and stated the property possessed by the others, and his disinclination to take from his wife's property, as his reason for not leaving anything to them. He then bequeathed the residue to his wife, "recommending to her, and not doubting, as she has no relations of her own family, but that she will consider my near relatives." Under this bequest, the wife was held to have taken absolutely. So in *Meredith* v. *Heneage*, Dom. Proc. reported 1 Sim. 542, a devise to the wife in fee, "unfettered and unlimited, in full confidence, and in the firmest persuasion, that in her future disposition and distribution thereof, she will distinguish the heirs of my late father, by devising and bequeathing the whole of my said estate, together and entire, to such of my said father's heirs as she may think best deserves her preference," was held not to create a trust.

wife, "all his estate, leases, and interest in his house, and all the goods, furniture and chattels therein at the time of his death, and also all his plate, linen, jewels and wearing apparel, but did desire her, at or before her death, to give such leases, house, furniture, goods and chattels, plate and jewels, unto and amongst such of his own relations as she should think most deserving and approve of." The wife having died without having specifically disposed of the goods in the house, or of the jewels, the court held that the husband's next of kin were entitled against her executors.

From questions put by the Committee, it would appear to have been their opinion, that Mr. King might sell a rent-charge; that a purchaser could not have objected to the title; and that, for any thing which appeared to the contrary, the purchase-money received for the rent-charge might have been invested according to the trusts of the will.

The Committee resolved, that the case against the qualification was not made out.

The following questions of evidence were determined in this case.

A witness, called to produce the poll, allowed to be cross-examined by the counsel for the sitting members as to the merits of the case, with this

Mr. John White, one of the sheriffs of Coventry, was the first witness called on the part of the petitioners, to prove the poll-books, and was examined by Mr. Crowder for that purpose, as well as to verify one or two documents he produced; in consequence of which, the counsel for the sitting members insisted on their right to cross-examine him as to the whole merits of the case (*z*). To this it was objected, that though the

(*z*) In the *Worcester case*, 3 Dougl. 261, the counsel for the sitting member having proposed to cross-examine the returning officer, who was called for the purpose of producing the poll, as to the appointment of constables and other points of the case, it was objected, that such a course would have the effect of anticipating the defence, before the petitioner's witnesses had been examined to establish the charge. The Committee determined that the cross-examination should not take place *at that time*. In the

petitioners had been obliged to put him in the box, as having the custody of the poll-books, (which Committees always held it necessary to prove,) he was in fact anything but their witness; and, that being criminally charged in the petition with a neglect of duty, he was so far a party, that he might have appeared by counsel if he had wished to do so; that it was therefore monstrous to permit him to give any evidence at all (*a*), still more so to permit the counsel for the sitting mem- to cross-examine him. In answer to this Mr. Cockburn urged, that any witness of the utmost importance might be excluded, if a charge against him of some misconduct were sufficient to shut out his testimony (*b*). To

qualification, that the counsel was to bear in mind, that he was substantially examining his own witness.

Clitheroe case, mentioned in a note to the *East Grinsted case*, 1 Peck. 349, a parcel of records, being the verdicts of the inquiry jury at the court leet, being produced by the counsel for the sitting member, who read only such of the verdicts as they thought proper; and the counsel for the petitioner, having insisted on a right to read, as by way of cross-examination, certain other of the verdicts, the Committee directed them to confine themselves to such as the sitting member offered in evidence. The rule as laid down by Mr. Phillipps, in his Treatise on Evidence, vol. 1, c 8, p. 273, is as follows: "If a witness is called by a party merely for the purpose of producing a written instrument, belonging to the party, which is to be proved by another witness, he need not be sworn; and if not sworn, he will not be subject to cross-examination. If a witness is sworn, and gives some evidence (as proving an instrument) however formal the proof may be, he is to be considered a witness for all purposes; and this, although he may be substantially the real party in the suit, and the party on the record a mere nominal party; *Morgan* v. *Brydges*, 2 Starkie, 314. If he is sworn, and would be competent to give evidence for the party calling him, the other party will in strictness be entitled to cross-examine him, though he has not been examined in chief; *Rex* v. *Brooke*, 2 Starkie, N. P. C. 473." See *New Sarum case*, *ante*, p. 246.

(*a*) In the *Cardigan case*, 3 Dougl. 228, the Committee refused to receive the evidence of the mayor, who was criminally charged in the petitions.

(*b*) This line of argument was urged with success in the *Worcester case*, 3 Dougl. 275, where the Committee admitted the evidence of the mayor to disprove the charge against himself and the other justices, that they had abused their corporate powers, and had corruptly joined in making constables for the purpose of influencing the election. A similar decision was made in the *Downton case*, reported in a note, 1 Peck. 341.

which Mr. Crowder, in reply, said, that if such a charge were introduced merely with that view, the Committee would know how to deal with it, but that there was no foundation for such a remark as applied to the present case. The Committee permitted the cross-examination to proceed, recommending Mr. Cockburn to bear in mind, that he was substantially examining his own witness, and not therefore to make his questions too leading.

In support of the general charge of intimidation, the acts of a person not shown to be connected with the sitting members may be given in evidence.

An objection having been taken to a question respecting a body of persons going in procession from the house of a publican named Randall, on the ground that the connection of Randall with the candidates should be first proved, the Committee thought the line of evidence admissible to prove the intimidation, independent of connection with the candidates (*c*).

The Committee also determined, that when a witness was examined as to his belief of any obstruction given to voters at the poll, the question should be limited to the belief of the witness, derived from his own observation (*d*).

(*c*) Printed Minutes, p. 123.

(*d*) Printed Minutes, p. 209.

CASE XIX.

CITY OF LIMERICK.

The Committee was appointed on the 14th of May 1833, and consisted of the following Gentlemen:

Sir Thomas Fremantle, Bart., M. P. for Buckingham, *(Chairman.)*

The Hon. Duncombe Pleydell Bouverie, M. P. for New Sarum.
Paul Beilby Thompson, Esq. M. P. for E. R. Yorkshire.
Francis Baring, Esq. M. P. for Thetford.
Sir Ralph Lopez, Bart. M. P. for Westbury.
Sampson Stawell, Esq. M. P. for Kinsale.
Paulet St. John Mildmay, Esq. M. P. for Winchester.
W. Seymour Blackstone, Esq. M. P. for Wallingford.
Charles P. Yorke, Esq. M. P. for Cambridge County.
Sir Robert Harry Inglis, Bart. M.P. for Oxford University.
Edward John Stanley, Esq. M. P. for North Cheshire.

Petitioners:—John Vereker, jun. Esq. and Electors.
Sitting Members:—William Roche & David Roche, Esqrs.
Counsel for the Petitioners:—Mr. Harrison and Mr. Serjeant Merewether.
Agent:—Mr. Baker.
Counsel for the Sitting Members:—Mr. Follett & Mr. Austin.
Agent:—Mr. Potter.

THE petition stated, that the sheriffs for the city of Limerick received the writ for an election on the 6th of December, and that on the 8th they caused proclama- The poll in counties of cities and o towns in

Ireland ought to be kept open for the number of hours in each day directed by 1 Geo. 4, c. 11, s. 19, as to counties at large.

Although the returning officers do not keep the poll open the number of hours in each day directed by law, yet the election will be held valid, unless it is shown that the result of it has been affected by such proceedings of the returning officers.

tion to be made, that they would on the 17th proceed to an election in pursuance of it, which they accordingly did; that the sitting members, Samuel Dickson, Esq., Daniel O'Connell, Esq., James Edward Gordon, Esq., and John Vereker, jun. Esq., (who was one of the petitioners,) were the only candidates who presented themselves; and Mr. O'Connell and Mr. Gordon shortly after they were put in nomination having retired, a poll had been demanded in the usual manner; that the sheriffs appointed deputies, and allotted booths for the polling of freeholders, leaseholders and householders, and appointed booths for the polling of freemen, and also specially appointed booths for the qualification of Roman-catholic freeholders, and proceeded to take the poll for the county of the said city, and continued to do so from day to day until the 22d of December; and that Mr. Dickson having withdrawn as a candidate on the third day of the election, Ralph Westropp, Esq. was put into nomination as a candidate; that the sheriffs on the 22d declared, that Mr. William Roche had 1,648 votes, Mr. David Roche 1,285 votes, the petitioner, Mr. Vereker, 1,105 votes, and Mr. Westropp 104 votes, and thereupon that the sitting members were duly elected; that the election was not had according to the laws in force for regulating elections, and the majority in favor of the sitting members was but a colourable majority, and caused and procured by undue, illegal, unconstitutional, and unjust means; that the sheriffs were bound to have, or cause the poll to be, kept open on every day of polling from 9 o'clock in the morning, except on the first day of polling, until 5 o'clock in the afternoon, except on the last day of polling; yet they, on every day of polling during the election did not open the court, or commence the polling, until the hour of 10 in the morning, and sometimes later, and closed it at the hour of 4 in the afternoon each day, thereby in fact shortening the

period allowed by law for polling; that the sheriffs refused to admit to the poll several electors qualified to vote, who appeared and tendered themselves to be polled a few minutes after the hour of 4 o'clock in the afternoon, and within the hours declared by law, and who would have voted for the petitioner, Mr. Vereker, if admitted to poll; that by the irregular and undue shortening the time for polling, upwards of 460 electors duly qualified to vote were prevented from voting thereat, and remained unpolled at the close thereof, and who, if they had been admitted to poll, would have given Mr. Vereker a majority over Mr. David Roche. It also contained allegations of admission by the sheriffs of voters on the production of improper certificates; of the administration by Mr. David Roche of the qualifying oaths to Roman-catholics, in the character of a magistrate, whilst he was a candidate; and of rioting, which were not persisted in. It prayed, either that it might be declared, that the election was null and void, or that Mr. Vereker ought to have been returned, and that his name might be substituted in the return for that of Mr. David Roche, or in the place of both the Mr. Roche's, and a new election ordered for another member, or that the election of the Mr. Roche's, or one of them, might be declared null and void.

It appeared by the evidence, that on the day of nomination, Mr. O'Connell, (who was proposed as a candidate merely for the purpose, as he avowed at the conclusion of his speech on the hustings, of having an opportunity of addressing the electors,) requested the sheriffs to defer the polling till the next day, on the ground of personal accommodation to himself. On some unwillingness being however shown to acquiesce in this proposal, he referred to the 4 Geo. 4, c. 55, s. 64, which he declared to contain the law regulating the time of polling for counties of cities, (as Limerick is,) and pointed out to the sheriffs, that since they would

be obliged to close the poll at 4 o'clock, and the speeches of the candidates, their proposers and seconders, and the swearing in of the deputies and qualifying magistrates, would last nearly till that time, it would be the better course to postpone the polling till the following morning. The sheriffs, believing the law to be as he stated it, then agreed to do so, and publicly proclaimed from the hustings, that the poll would commence the next day, at 10 o'clock in the morning, and would continue on that and the succeeding days from the same time till 4 o'clock in the afternoon. Mr. Mason, the agent for Mr. Vereker, (who was examined as a witness,) declared that he would not consent to the waiving of an Act of Parliament, or make any compact. The sheriff made no reply to this observation, which did not appear to excite much attention at the time. From the difficulties that occurred in arranging the poll-clerks in the different booths, the polling did not begin the first day (Tuesday) till nearly 11 o'clock, and closed on that and the following day (Wednesday) without any objection, at four o'clock. On the Thursday, Mr. Coppinger, one of the petitioners, came to one of the sheriffs in the sheriffs' booths, about half-past 4 o'clock, after the polling had closed, and all the clerks had left the other booths, and stated "that he had gone to vote, and found the booth closed, which it had no right to be." The sheriff offered to take his vote then, but after five or six minutes consideration, he refused to give it, and did not vote at all during the election. Immediately after Mr. Coppinger had made this application, one of Mr. Vereker's agents said he had several voters who wished to be polled. The sheriff desired to see them, but they did not come forward. It appeared besides, that three persons had applied to vote that day at one of the booths after the poll had closed. On the next day (Friday) the polling was from 10 till 4. On that morning, however, the sheriffs

received two protests from electors in the interest of the sitting members, one at half-past eight, and the other at six minutes after nine o'clock in the morning, against their mode of proceeding, and demanding that the poll should be taken from nine to five. The sheriffs endeavoured to get the poll-clerks together in consequence of these protests, and to commence the poll before ten, but were not able to do so. They also proposed that some agreement should be come to between all parties, and that the poll should not stop on that day till five o'clock, and should commence the next day at nine. To this, however, the agents for Mr. Vereker refused to consent, saying, that the law had been violated, and there must be a fresh election. The poll was closed at four o'clock on the Friday, and it was proved that two electors applied after that time to vote at one of the booths. On the Saturday the poll was taken from 10 till 5 o'clock. The polling was stated to have been very slack at the close of each day, and very few persons at all voted on the Saturday. No proof was given of the number who polled for the respective candidates, the certificate of them by the returning-officer having been informal; but on Mr. Serjeant Merewether adverting to them, in his summing up, as stated in the petition, the Committee informed him, that if they thought the circumstance at all material, they would give him an opportunity of proving what they were in a subsequent stage of the proceedings.

Mr. Harrison and Mr. Serjt. Merewether for the Petitioners.

The Irish Reform Act has specially provided, that the poll at every election for "any county, city, town or borough in Ireland," shall be regularly and duly proceeded in from day to day, for so many hours of each polling-day as the returning officer or officers were then

directed to keep open the poll in counties at large" (*a*). The time of polling being thus limited with reference to a pre-existing law, the question is, to what law it is to be referred? for if the Legislature meant to refer to the 60 Geo. 3, and 1 Geo. 4, c. 11 (*b*), which regulated the time of polling for counties and boroughs in Ireland, the time during which the poll ought to have been kept open each day was, from nine in the morning, except on the first day of polling, till five in the afternoon, except on the last day, and the sheriff has clearly transgressed the law; if, however, reference was intended to be made to the 4 Geo. 4, c. 55 (*c*), which regulated the time of polling for counties of cities and counties of towns in that country, the time during which the poll ought to have been kept open, was from 10 in the morning, except on the first day of polling, until four in the afternoon, except on the last day; and the sheriff nearly complied with the provisions of the law. It would have been extraordinary if Parliament, in an Act to increase the freedom of elections, had chosen the shorter instead

(*a*) 2 & 3 Will. 4, c. 88, s. 52. "And be it further enacted, that from and after the passing of this Act, every poll which shall be demanded at any election of a member or members to serve in Parliament for any county, city, town or borough in Ireland, shall commence on the day upon which the same shall be demanded, or upon the next day after, (unless such day shall happen to be a Sunday, Christmas-day or Good Friday, and in such case on the day next after), and shall be duly and regularly proceeded in from day to day, for so many hours of each polling-day as the returning officer or officers are now by law directed to keep the poll open in counties at large, (Sunday, Christmas-day and Good Friday excepted,) until the same shall be finished, but so that no poll shall continue more than five days at the most, (Sunday, Christmas-day and Good Friday always excepted); and if such poll shall continue until the fifth day, then the same shall be finally closed at or before the hour of five o'clock in the afternoon of the same day; and the returning-officer shall, immediately after the final close of the poll, declare the name or names of the person or persons having the majority of votes in such poll, and shall forthwith make a return of such person or persons."

(*b*) Sec. 19.

(*c*) Sec. 64.

of the longer period for polling; but the latter construction, which will be contended for by the other side, was never either in the contemplation of the framers of the Act, nor can it be given to it by any acknowledged principle of legal interpretation. Counties of cities are of much later date than counties at large, they were first introduced in the reign of Edward the 3d (*d*), and their number was afterwards much increased in subsequent reigns, particularly that of Henry the 6th; the reason of their institution being, effectually to prevent the intrusion into the cities of the sheriffs of the counties at large. Where, however, the word "counties" has been used in an Act of Parliament by itself, it has been always construed to apply to counties at large, and not to counties of cities, and so indeed it was expressly held in the late case of the *King* v. *Haythorne* (*e*). Here, however, no doubt of that kind could arise, for the Legislature has used the words "counties at large," in order to put an end to all ambiguity. It is clear, therefore, that the poll has not been kept open the proper number of hours which the law directs; and the next question is, whether in consequence of it, the election ought to be declared void?

The rule of courts of law, as well as of Committees of this House, has always been, that some parts of a statute may be held merely directory, and that the non-compliance with them does not vitiate the whole Act. Thus the Court of King's Bench has held good the election of an alderman of Launceston, which was made more than eight days after a vacancy had occurred,

(*d*) The first charter creating a county a city of itself, is that of Edward the 3d, to Bristol, in the 7th year of his reign. The county of Middlesex had been previously granted to the City of London, by a charter of Henry the 1st. See on this subject, Corbett on the Elective Franchise for the corporate counties of England and Wales, p. 17.

(*e*) 5 B & C. 429.

although the charter of the town had directed it to be made within that time (*f*); and the House of Commons supported the return of Sir Edward Coke (*g*), although as sheriff of Buckinghamshire he was bound, according to the letter of the then existing law, to have resided constantly in his county. This rule, however, has always been held to apply exclusively to mere formal acts; it never has been extended so as to dispense with those that are essential. Can then it now be applied to the dispensing with so essential a point in an election as the number of hours appointed for polling? The Reform Act (*h*), by the special directions it contains, to enable the returning-officer to close the poll when 20 persons only shall have voted in the course of any one but the first day, or to keep it open for a longer period if it should be interrupted by force or violence, shows the care of the Legislature, that every voter should have the free enjoyment of the whole time allowed him by the law to tender his suffrage in, unless under the particular circumstances which are provided for.

It had previously been provided, by the 1 Geo. 4 (*i*), that this period should not be interrupted by arguments in the deputies' booths; and by the 35 Geo. 3 (*k*), that rioting should not be any excuse for closing the poll.

(*f*) Rolle's Abrid. tit. Corporations, cap. G. pl. 5. See also *Wilson* v. *Dennison*, Ambler, 83.

(*g*) 4 Instit. cap. 1, p. 48: and see *Abingdon case*, 1 Dougl. 419; *Leicestershire case*, ib. 342, and *Southampton case*, 4 Dougl. 87. The obligation of sheriffs to reside within their counties appears now to be virtually dispensed with by the statute 3 Geo. 1, cap. 15, ss. 18, 20. It is said, that Sir E. Coke, during his shrievalty, always slept in Buckinghamshire, notwithstanding his attendance in the House, 4 Douglas, 152, note to *Southampton case*.

(*h*) 2 & 3 Will. 4, cap. 88, s. 53.

(*i*) 1 Geo. 4, c. 11, s. 16.

(*k*) 35 Geo. 3, c. 29, s. 12, re-enacted as to counties of cities, by 4 Geo. 4, c. 55, s. 70.

These enactments, however, merely contained the spirit of the early law of Parliament, which always held it to be most essential, that every man should vote at any hour the poll continued open, and that the poll should so continue till every voter had had an opportunity of doing so. Thus, in the *Arundel case* (*l*), where, after a poll had been granted, and a majority had been declared for Mr. Mill, the mayor refused to dissolve the assembly, and by sending for non-resident burgesses, finally obtained a majority for Sir George Chaworth, the Committee determined that Mr. Mill ought to have been returned. In the *Pontefract case* (*m*), the fifth resolution of the Committee was, "that a poll having been duly demanded, and not effectually prosecuted, whereby it did not appear who had the most voices of the electors, the election was void, albeit the disturbance grew out of the part of Sir Richard Beaumont, "in whose behalf the petition had been presented." In the *Cirencester case* (*n*) it was determined, that the agreement of competitors, or any others, could not alter the law. The reason of this determination is clear, when we consider that in every election there are two other parties interested besides the candidates, namely, the constituents and the public at large. In the *Dorset case* (*o*) too, the sheriff was not held justified in stopping the poll according to an agreement between the candidates. [Chairman.—The principal reason that election was held void was, because it was a case where there was a double return.] The misconduct of the sheriff was also one of the reasons alleged by the Committee for avoiding it, and the House confirmed the finding of the Committee in all

(*l*) Glanville, 71.
(*m*) Ibid 143.
(*n*) Ibid 108.
(*o*) 9 Journals, 439.

its parts. In the *Cricklade case* (*p*), where the returning-officer stopped the poll on pretence of a riot, and refused to renew it, the election was held void. In the *Seaford case*, where the returning-officer proceeded to the election without having given four days previous notice of it, as required by the statute 7 & 8 Will. 3, c. 25, the Committee determined the election to be void. In this case, nothing could have been done in the interval before the election, and it would have been impossible, consequently, to show any injury that either the candidates or the electors suffered from the infringement of the law. It is, therefore, perhaps, the strongest of the series of cases which establish the position, that a returning-officer cannot, at his discretion, alter any of the rules which Parliament may impose upon him in the conduct of an election, and that if he does so, the election is void. The law does not in fact require an injury to be proved, but infers that one has been sustained, where the provisions of an Act of Parliament have been manifestly contravened. Here, however, injury was shown in one particular case, where a voter had been proved to have lost his vote from the poll not having been kept open, for the sheriff's offer to receive it after the poll had closed, amounted to nothing, and had he availed himself of it, his vote would have been invalid. Injury was in fact done to the whole body of electors, by abridging them of the time allowed them for exercising their elective franchise. No argument could be drawn from the slackness of the poll at any time during the election. In the *Rochester case* (*q*), where only eight persons had voted on the last day but one of polling, and 36 only on the last day, very few electors remained unpolled, and the mayór had closed the poll on the eighth day, on the advice of his

(*p*) 1 Douglas, 203.

(*q*) Male on Elections, Appendix, p. 141.

assessor the election was held void; and this case, which was much stronger than the present, had always been considered to have been rightly decided, although formerly much more discretion was allowed to the returning-officer than now.

The Legislature had used every means in its power to point out the number of hours during which every elector ought to have an opportunity to record his vote. It was most essential to an election that that time should be observed, and should the Committee, by its decision, establish the principle, that returning-officers might open and close the poll at what hours they thought fit, it would place in their hands a power which it would be impossible to limit, and which would be liable to abuse to a most dangerous extent.

Mr. Follett, for the sitting members:

The opinion that was given by Mr. O'Connell was delivered by him as a lawyer, in open court; and even if the Committee should determine it to have been an erroneous one, still the sheriffs were justified in acting upon it. He should, however, contend, that the opinion was perfectly correct, and that the sheriffs had kept open the poll the full number of hours in every day that the law directs. The 4th Geo. 4 was a statute passed with great deliberation, and with the most minute enactments as to every particular connected with the polling and elections of counties of cities and counties of towns in Ireland. It was probable that the Legislature would not wish to alter the provisions of this statute in those respects, although it would naturally, at the time of passing the Reform Bill, desire to make regulations concerning the mode of conducting elections in other places, to which that statute did not apply. In fact, no alteration was made, for the section of the Reform Act that had been cited refers only to elections for "any

county, city, town or borough." In all of these, the hours to be observed are directed to be the hours formerly prescribed for counties at large: but counties of cities and counties of towns are not mentioned in this section: the *King* v. *Haythorne* has decided, that they cannot be held as included under the word "counties;" the fact of a separate Act having been passed respecting them, shows that they were always held distinct from "cities, towns and boroughs." If therefore the hours of polling in them are not mentioned in the section, they must remain as settled by the 4th Geo. 4, which is not in any manner inconsistent with the Reform Act (*r*).

Admitting, however, for the sake of argument, that the construction of the other side was correct, and that the poll was not kept open for the number of hours which it legally ought to have been, was there, either in the Reform Act, or in any of the preceding Acts which directed the duration of polls in Ireland, any provision declaring that, or if the poll was not kept open the requisite number of hours in each day, the election should be void? Had such a provision been inserted no doubt of course would have arisen in the present case; but no such provision existed, and the Act must therefore be construed according to the general rules of construction. A distinction had always been drawn between statutes which contained negative words, and which were held to be imperative, and statutes of which the words were only affirmative, and which were held to be simply directory. This distinction is pointed out by Lord Tenterden, in the case of *Rex* v. *Justices of Leicester* (*s*), where he says, "It has been asked, what language will make a statute impera-

(*r*) No allusion was made in the argument to the 62d section of the Irish Reform Act, which provides, that the words "city, town or borough," used in this Act, shall be construed to include all places, whether corporate or otherwise, entitled to send a member or members to Parliament.

(*s*) 7 B. & C. 12.

tive, if the 54 Geo. 3, c. 84, be not so? Negative words would have given it that effect, but those used are in the affirmative only." Where the provisions are imperative, it was not disputed, that an act not done in conformity to them was void; where, however, the provisions were merely directory, such an act was held valid in courts of law; and with regard to elections, Committees had followed the rule of the courts, and had held them good, notwithstanding that the provisions of the statutes had not been complied with, unless it was shown that the infringement of those provisions had influenced the return. This was a rule that had been observed in every Committee, except that which decided upon the case of *Seaford*, and their decision was utterly at variance with those of all prior and subsequent Committees. A contrary rule would be attended with the inconvenience of enabling returning-officers, by purposely not complying with some of the directions of a statute, at any time to avoid an election. It would be monstrous if such a power should be given to them by any construction of law; it certainly would be at variance with the spirit of the Reform Act, of which the 57th section provides a punishment by pecuniary penalties to the amount of 100 *l.* for any wilful contravention of the Act by returning-officers. This enactment was to a certain degree unnecessary, for the infraction of the provisions of a statute are always punishable as misdemeanors at common law by fine and imprisonment; but it shows the anxious care of the Legislature to guard against the misconduct of returning-officers. A decision which would put into their hands the power of avoiding an election by misconduct, would in many cases be an inducement to them to commit irregularities. If indeed the law contended for by the other side were correct, it would be impossible to say what deviation of a returning-officer from the direction of the statute

would be sufficient to avoid an election. A statute (*t*) directs that the poll-clerks should be sworn in terms as precise and specific as those in which the Reform Act directs the number of hours during which the poll is to be kept open; if, consequently, their reasoning is to be adopted, the omission by a returning-officer to swear a single poll-clerk would enable a disappointed candidate to set aside any election, however decisive the majority might be of his opponent. Such, however, never yet had been, and it was hoped never would be, the law o Parliament.

The general rule of Committees on this subject is clearly shown by their decisions on the 25 Geo. 3, c. 84. That statute regulated the conduct of elections in England previously to the passing of the Reform Acts, and it contained a provision (*u*) of a similar kind to that under discussion, "that the returning officers, unless prevented by some unavoidable accident, should, during the continuance of the poll, on every day subsequent to the commencement of the same, cause the said poll to be kept open for seven hours at least in each day." In the *Colchester case* (*w*), which was subsequent to that of *Seaford*, this provision had been clearly disregarded; the Committee however resolved, "that they did not consider the omission of any form prescribed by a directory Act of the 25th of his present Majesty as sufficient to make the election void," and they afterwards proceeded to state in their report, "that they had come to the resolutions that the poll-clerks had not been sworn, and that such omission was contrary to law; that the adjournments of the poll on the second and third days of the election without sufficient cause were highly improper and contrary to law." That decision was, therefore,

(*t*) 25 Geo. 3, c. 84, s. 7.
(*u*) Section 3.
(*w*) 1 Peck. 507.

completely in point with the present case, for although it appeared in the resolutions of a Committee, that the directions of a statute with regard to the time of polling had not been observed, yet the same Committee held the election valid. Mr. Orme, in his work on elections (*x*), states his opinion, that where any of the statutory regulations are not attended to, an election will not be avoided by such neglect on the part of the returning-officer; and he refers to the case of *London* (*y*), where the sheriffs had kept the poll open only six hours in each day. In that case, indeed, no direct decision was made upon this point, as the Committee refused to entertain it, as it had not been made a distinct ground of complaint in the petition: but both there and in the *Taunton case* (*z*) (where also there was no decision upon the exact point), the position, that a breach of a directory clause in a statute by a returning-officer will not avoid the return, unless some particular mischief is shown to result from it, was laid down as established law in the arguments adduced by counsel. In the *Orkney and Zetland case* (*a*), however, another Committee came to a precise determination on this point, for they there decided, that the election was valid, although the steward had not given notice at any of the parish churches in the Zetland Islands, as by the Scotch law (*b*) he was bound to have done at all the parish churches within his stewartry. In this case, the *Seaford case* was cited by the counsel for the petitioners, and, as the determination of the Committee was in direct opposition to it, they must be supposed to have over-ruled it. That case indeed, was at variance, not only with subsequent, but also with prior decisions; for

(*x*) Orme, p. 16, 2d edit.

(*y*) 2 Peck. 271.

(*z*) 2 Peck. 430.

(*a*) 1 Fraser, 369.

(*b*) Scotch Act, 1681, cap. 21, & 12 Ann, cap. 6, s. 4.

in the *Pembrokeshire case* (*c*) an election was held good, although the sheriff had not held it as he was enjoined by the statute 7 & 8 Will. 3, c. 25, sec. 3, at the most usual place of election, where it had been most usually held for 40 years last past; and in the case of the *North Berwick* (*d*) district of boroughs, an election was supported where the Bribery Act was not read, as the 9th section of it directs, at the election of the magistrates who chose the delegates for two of the contributory boroughs. Thus the whole of the reported cases and authorities coincide, with the exception of the *Seaford case*, which is not only unsupported by any other authority, either legal or parliamentary, but is indefensible on principles of justice, for the Committee in that case refused to admit any evidence to prove that the petitioner had attended and voted at the election, that he had himself proposed the day of election to the returning-officer, and that every elector in the borough, but two friends of the sitting member, had voted, or even that the notice of the election had been given fraudulently, in concert with the petitioners. The late and unreported cases were in perfect analogy with the preceding. In the *Dorsetshire case* (*e*) an objection was taken by the petitioners to many votes that the poll-clerks had not entered the residences of the voters, as they were bound to have done by the 10th Ann, c. 23, s. 5, and they contended, that all such votes were bad in consequence; the Committee held, however, the statute to be only directory, and the votes were retained on the poll. In the *Galway County case* (*f*) no deputy-clerk of the peace had attended at the polling-places with the registry-book and affidavits, as directed by the 1st Geo. 4, c. 11, s. 8, and it was contended,

(*c*) 32 Journals, 864, 904, 905, & 3 Luders, p. 27, *et seq.*
(*d*) 2 Douglas, 452.
(*e*) Minutes, 1st March 1832.
(*f*) Minutes, 3d March 1831.

that the election was consequently void; but the Committee over-ruled the objection. In the *Coventry cases*, both in 1827 and the present session, Committees had determined, that riots, however violent, would not avoid the election, unless it was shown that they affected the return. The series of decisions of Committees in favor of the proposition he had advanced was therefore, with one single exception, uninterrupted.

In courts of law the doctrine was firmly established, that where a statute directed an act to be done in a certain manner, and it was not so done, the act was not held void, unless the statute went on to direct that it should be so; but the person doing it was liable to punishment for disobedience to its provisions. Thus in the case of *The King* v. *Justices of Leicester*(*g*), an order of justices at the Michaelmas quarter-sessions was held valid, although the sessions were not held in the first week after the 11th of October, as they were directed to be by the 54th Geo. 3, c. 84, s. 1. In the case of *The King* v. *Birmingham* (*h*), a marriage by a minor, without the consent of his father, was held good, notwithstanding that the 4th Geo. 4, c. 76, s. 16, expressly requires such consent. In *The King* v. *The Mayor of Norwich* (*i*), which is the latest decided case on this subject, the Court of King's Bench held a provision in the statute 8th Geo. 4, c. 29, that guardians of the poor should be chosen within three calendar months after the 4th of May in every year, to be only directory, and granted a mandamus to compel their election, although that period had expired. A like construction had, in *Rex* v. *Sparrow* (*k*), been put upon the clause in the statute of 43d Eliz., c. 2, which directs the time within which overseers ought to be appointed; and in

(*g*) 7 B. & C. 12.
(*h*) 8 B. & C. 29.
(*i*) 1 B. & Ad. 310.
(*k*) 2 Strange, 1123.

The King v. *Denbighshire*, (*l*), upon the statute of 13 Geo. 3, c. 78, s. 1, which appoints the sessions at which an appointment ought to be made of surveyors of highways.

The law, both of Parliament and courts of law, having been established by the series of decisions that have been mentioned, can this be held a case where an election ought to be set aside? The only instances where voters were proved to have wished to have voted after the books were closed, were on the second and third days, and they had abundant opportunities before the close of the poll to have tendered their votes. Without disputing the proposition, that a man had a right to vote at any time during an election that he thought fit, it surely could not be contended, that if he withheld his vote, he had a right to come forward and complain of its not having been taken. Under the old law a returning-officer might stop the poll on the second day even, if no votes remained to poll; and the reason of the determination in the *Rochester case* was, that voters were then actually on their road to the election. In the present case, no proof had been brought forward of any number of electors having been left unpolled, and it was in proof that on the last day hardly any came to vote. There could be no doubt but that the sitting members had been returned by a large majority of the constituency of Limerick, and that the result would have been the same whatever hours had been allotted for polling. Even, therefore, if the Committee should be of opinion, that the sheriffs had been mistaken in their construction of the Acts of Parliament, which he by no means admitted, he trusted, on the grounds, that the statute was merely directory, and that no effect had been produced on the return by the in-

(*l*) 4 East, 142.

fringement of its provisions, that they would confirm the election.

The Committee determined, that the proceedings of the sheriffs of the county of the city of Limerick, in opening and closing the poll at hours other than those prescribed by the 2d & 3d Will. 4, c. 88, and 1st Geo. 4, c. 11, was highly improper; but the Committee have reason to believe, that their conduct did not arise from any corrupt motive, and further, that the result of the election was not affected by such proceedings. The resolution then went on to declare, in the usual terms, that the sitting members were duly elected, and that neither the petition nor the opposition to it appeared to be frivolous or vexatious.

The following incidental points occurred in the course of the proceedings.

Mr. Parker, the clerk of the peace, and town-clerk of the city of Limerick, was called to produce the poll-books; he stated that he had received them from the sheriffs, sealed up in a parcel, which he had not opened till he produced it to the Committee. On opening this parcel, it was found to contain the poll-books, and an affidavit as to their identity, according to the provisions of the 76th section of 4 Geo. 4, c. 55, purporting to be signed by the sheriffs. Mr. Parker said he could not swear to the handwriting of the sheriffs, but he could to that of the magistrate before whom it was taken, and who had attested it. Mr. Austin objected, that this was not a sufficient identification of the poll-books. Mr. Harrison then said, that they were not necessary for the sole facts he wished to establish, which were merely the numbers who polled for each candidate; and he then referred to the certificate of the returning-officer, which ought, according to the 4 Geo. 4, c. 55, s. 71, to have been indorsed on the back of the return. No such indorsement was however found on it, although a certificate by him to that effect was indorsed on the

An affidavit by a returning officer of the identity of the poll-books in an Irish election, is sufficiently proved by evidence of the handwriting of the magistrate before whom it was sworn.

Semble, that an account of the number of electors who polled for each candidate at an election for an Irish county of a city, which was indorsed on the back of the writ by

the returning-officer, is not a sufficient certificate under the 4 Geo. 4, c. 55, s. 71, to dispense with the production of the poll.

writ to which it was attached. Mr. Harrison then waived the question of the validity of a certificate under such circumstances, and contended, that the poll was sufficiently proved by the affidavit of the sheriff, and that it was not requisite that his handwriting should be proved, as the attestation of the magistrate, and the fact of its having been delivered by the sheriffs to the clerk of the peace, in the same parcel, was abundant testimony that it was his affidavit. Mr. Austin, on the other side, contended, that proof of the sheriff's writing would be the best evidence, and according to the general rule, the best evidence ought always to be produced. The Committee determined, that "the affidavit, as tendered by the counsel for the petitioners, is sufficiently proved by evidence of the handwriting of the magistrate before whom such affidavit was sworn."

A witness called by the petitioners to produce the poll, permitted to be cross-examined generally by the counsel for the sitting member, but not at the time at which he was called by the petitioners.

Mr. Parker was called by the petitioners merely to produce the poll. The counsel for the sitting-member proposed to cross-examine him generally. Mr. Serjeant Merewether objected to this, and cited the *Worcester* (*m*), *Clitheroe* (*n*), *Monmouth* (*o*) and *Rye* (*p*) *cases.*

The Committee were of opinion, that Mr. Follett had a right to cross-examine generally, but that that was not the time for pursuing such a course of examination. The witness was not again called.

(*m*) 3 Dougl. 261.
(*n*) 1 Peck. 349.
(*o*) Minutes, 13th July 1831.
(*p*) Minutes, 29th April 1830.

CASE XX.

CITY OF LINCOLN.

The Committee was appointed on the 2d of May 1833, and consisted of the following Gentlemen:

George Wilbraham, Esq. M. P. for South Cheshire, (*Chairman*).

W. Peter, Esq. M. P. for Bodmin.

W. S. Blackstone, Esq. M. P. for Wallingford.

The Hon. George Keppel, M. P. for East Norfolk.

Charles Philip Yorke, Esq. M. P. for Cambridgeshire.

Charles Hanbury Tracy, Esq. M. P. for Tewkesbury.

The Hon. George John V. Vernon, M. P. for South Derbyshire.

John Lloyd Vaughan Watkins, Esq. M. P. for Brecon.

George W. Wood, M. P. for South Lancashire.

Sir Wm. John Browne Folkes, M. P. for West Norfolk.

The Hon. Hugh Arbuthnot, M. P. for Kincardineshire.

Petitioner:—Charles Delaet Waldo Sibthorp, Esq.
Sitting Members:—George Fleschi Heneage, and Edward George Earle Lytton Bulwer, Esqrs.
Counsel for the Petitioner:—Mr. Harrison, Mr. Joy and Mr. Preston.
Agents:—Messrs. Macdougall and Bainbrigge.
Counsel for Mr. Bulwer:—Mr. Follett and Mr. Cockburn.
Agent:—Mr. Beavan, of Sackville-street.

THE petition was by a candidate; and it alleged, that Mr. Bulwer, the sitting member, was not, at the time of his election, the eldest son or heir apparent of any peer

or lord of Parliament, nor of any person qualified by law to serve as a knight of the shire, and that he was not, at the time of the election, seised of or entitled to an estate, freehold or copyhold, for his own life, or for any greater estate for his own use, in lands, tenements or hereditaments, of the clear annual value of 300 *l.* above reprises, and above what would satisfy and clear all incumbrances affecting the same, and therefore that he was not entitled to stand as a candidate to represent the city of Lincoln, or to sit or vote as a member of the House; and it prayed that both the election and return might be declared void.

The particular of Mr. Bulwer's qualification, delivered by him to the Clerk of the House, was put in. He stated in it, that he made out his qualification by reason of his "having, holding and enjoying" (1st.) certain lands, called Lizzard Connell, in the parish of Galbally, barony of Costlea, and county of Limerick (*a*), in the possession of Moses Fitzgerald, and demised to him for three lives renewable for ever, at a fine of 5 *l.* on the dropping of each life, by a lease bearing date the 18th of September 1824, granted by Rosina Ann Wheeler, now the wife of Mr. Bulwer, at the annual rent of 198 *l.* 9 *s.* 6 *d.* Irish currency, or 183 *l.* 4 *s.* 1 *d.* present currency; (2nd.) certain other lands, called Lizzard Connell, in the occupation of Mary Odell, and her under-tenants, under a lease bearing date the 17th day of August 1810, granted by Francis Wheeler, Esq. to one William Odell, at the yearly rent of 26 *l.* Irish currency, or 24 *l.* English currency; (3rdly.) a clear yearly rent-charge of 180 *l.* payable to Mr. Bulwer during his life, and not redeemable, and charged upon two messuages, &c., at Norwood-green, in the parish of Hayes, in the county of Middlesex, and also upon all those premises and heredita-

(*a*) The particular stated the parcels and names of the occupiers of the Irish property, and of the English property charged with the rent-charges.

ments in the occupation of Clarissa Thackthwaite, situate at Norwood, "by an indenture bearing date the 4th of December 1832, and made between Clarissa Thackthwaite, of &c. of the one part, and the undersigned Edward George Earle Lytton Bulwer, of the other part," the consideration for which was stated to be 1,950 *l.*, paid to the said Clarissa Thackthwaite, and the witness to the execution and payment of the consideration was John Phillips Beavan, of Sackville-street, in the county of Middlesex, Gent.; (4thly.) and also a clear yearly rent-charge of 30 *l.* payable to Mr. Bulwer, and issuing out of and charged upon certain parcels of land called Shales, in the parish of Burnham, in the county of Berks, and upon two small parcels of land adjoining, called Alder Copse and Burgess Copse.

A notice was served on Mr. Bulwer to produce, 1st, the will, or a probate copy of the will, of Francis Wheeler, esq., the father of his wife; 2dly, any settlement made in contemplation of or subsequently to his marriage with his said wife; 3dly, the indenture bearing date the 4th December 1832, made between Clarissa Thackthwaite and Mr. Bulwer, and all leases of the property out of which the rent-charge of 180 *l.* mentioned in that indenture was issuing; 4thly, all deeds or instruments whereby he derived a title to the rent-charge of 30 *l.*, charged upon the pieces of land called the Shales, in the parish of Burnham, in the occupation of John Campbell, his under-tenants or assigns, and the two small pieces of land called &c., adjoining to the Shales, and any leases or agreements for letting the same. This notice Mr. Bulwer's solicitor undertook to admit at the hearing.

Deeds produced by a sitting member without notice must be proved in the regular

After Mr. Harrison had concluded his opening, he called upon the agents for the sitting member to produce the deeds according to the notice. A great many deeds were then produced, and Mr. Preston having inspected them, proceeded to sum up the case; he was,

way by a petitioner, before they can be admitted in evidence.

however, interrupted by Mr. Follett, who inquired whether he had closed his case, and informed him, that he should object to his commenting upon any of the deeds produced as evidence, until they had been proved in the regular way by an attesting witness. Mr. Joy then called Mr. Bulwer's agent, Mr. Beavan, showed him two of the deeds produced, and asked him whether they were the deeds referred to in the qualification? the witness answered, that he had never read or seen them until he opened them that day. Mr. Joy then tendered them as evidence. Mr. Follett objected to their reception; and the Committee, after hearing Mr. Preston, determined that the deeds should not be read. The arguments used by both of them were similar to those which will be reported in a subsequent part of this case, as having been employed on the second argument of this question.

A petitioner is not at liberty to divide his case against the sitting member.

Mr. Preston then proposed to show, that upon the face of his own particular, the sitting member had no qualification, reserving to himself the right of calling witnesses to prove another part of his case, if the Committee should decide against him. Mr. Follett, however, objected to the counsel for the petitioner being permitted thus to divide their case, and the Committee, after argument, decided that the petitioner should proceed and go through with his case.

An adjournment refused, which was asked for the purpose of enabling the petitioner to produce the attesting witnesses to some of the deeds produced by the sitting member.

An application was then made for time, in order to enable the petitioners to produce the attesting witnesses to such of the deeds produced as were dated more than three years back, and to which the particular did not furnish the names of the attesting witnesses. The question was twice argued; after the first argument, the Committee having intimated their wish to hear a further argument, in which the counsel should confine themselves to the point, whether due diligence had been used in endeavouring to obtain evidence as to the attestation of the deeds.

Mr. Harrison for the petitioner:

The rules of the House (*b*) oblige every member whose qualification is attacked, to insert in his particular the names of the attesting witnesses to all conveyances of the property to which he states himself to be entitled, if he has not been in possession of it more than three years. Part of the property included in the particular in this case is held by deeds whose date is less than three years ago. To these deeds we will produce the attesting witnesses; but the greater part of the property is stated to be held under deeds dated much more than three years back, and to these it is quite impossible that we should produce the attesting witnesses, because we never either saw, or had the means of seeing, the deeds before they were produced on the table of the Committee-room. The Speaker's warrant would not enable us to compel a private person to produce his deeds for our inspection. In the common case of a banker, whose books it is desired to inspect in order to establish a case of bribery by means of payments of money by the sitting member, you cannot compel him to show his books before he brings them into the Committee-room. In the *Camelford case* (*c*), an application was made to the Committee to oblige a banker to show his books, but it was refused. Not being able to know whom we were to call in order to prove these deeds, we are fairly entitled to ask an indulgence which has been ordinarily granted to parties where they have been called upon unexpectedly to produce evidence; *Galway case* (*d*), *Oxford case* (*e*), *Londonderry case* (*f*).

Mr. Follett and Mr. Cockburn, for the sitting-member.

The cases which have been cited, are cases where parties have been surprised by the occurrence of circum-

(*b*) See *Bath case*, *ante*, p. 25.
(*c*) C. & D. 239, but this point is not reported.
(*d*) Minutes, 1826. See *ante*, p. 240.
(*e*) *ante*, p. 101.
(*f*) *ante*, p. 275.

stances of which they were not aware, or over which they had no control. Was this, however, a case where indulgence ought to be granted to the petitioner? He must either have known or have been ignorant of Mr. Bulwer's qualification when he presented his petition; if he knew it, he should proceed to prove the defects of it; but if he were ignorant of it, would it be just that the Committee should give him time, in order to pick holes in a member's title deeds? Were parties to be encouraged to bring forward fishing petitions, in the hope that when deeds were produced before a Committee they might be able to detect some legal defect in them? The deeds, however, to be enabled to prove which an adjournment was now asked for, related to the Irish property mentioned in the particular. Every deed, as it was well known, relating to land in Ireland, is registered in Dublin: had the petitioner used therefore ordinary diligence, he might by inspecting the register there, have found out the names and residences of the attesting witnesses. He had not done so however, and could not therefore claim indulgence on the ground of having used, not reasonable, but even any, diligence at all. But there was another reason why he was not entitled to any favor, he had given no notice whatever to produce these deeds, he could not consequently have given any secondary evidence of them, and it must be supposed therefore that he came before the Committee relying on some case totally independent of any defect in them. Why, therefore, was the general rule of Committees, that a petitioner, on the ground of want of qualification, must prove everything, and that every presumption is to be raised in favor of the sitting member, who has sworn to that qualification at the table of the House, to be broken in upon for the first time, in order to enable the petitioner to prove what every petitioner on the same ground in this session

had been called on to prove; for both in the *Bath* (*g*) and the *Coventry* (*h*) cases, the attesting witnesses to the deeds under which the members claimed were called before they were admitted in evidence.

The Committee, after hearing Mr. Harrison in reply, informed the parties, "that it was the opinion of the Committee, that the petitioners do proceed forthwith with their case."

Mr. Beavan, the agent for the sitting member, and also the attesting witness to the deed granting the rent-charge of 180 *l.*, mentioned in the sitting member's particular, was then called by the petitioner's counsel to prove it, which he did; and he stated that part of the property comprised in it was let at rents amounting to 136 *l.* 10 *s.* per annum, and he estimated the annual value of the remainder of it, which was in the hands of the grantor, at 30 *l.* per annum: the lease of part of the property, however, he said, would expire in about three months, and an annual increase of rent of 16 *l.* 10 *s.* had been offered for it. He also stated, that this deed had neither been registered nor enrolled. An office copy of a judgment against Mr. Bulwer for 700 *l.* was then put in and proved. Mr. Cockburn having objected to an application made by Mr. Harrison, for liberty to give parol evidence of one of the deeds which had been produced at the commencement of the case, on the ground that secondary evidence of the contents of deeds was only admissible when the deeds themselves could not be produced, Mr. Harrison withdrew this application, and requested leave of the Committee to re-argue the question, whether or not he was at liberty to read the deeds produced without having proved them; and

(*g*) *Ante*, p. 24.

(*h*) *Ante*, p. 349. This is not strictly correct; one of the witnesses was abroad, the other had not been summoned. The deed was produced by the agent of the sitting member, whose counsel raised no objection of the nature stated above. A will produced by the petitioners was proved by an attesting witness.

A second argument of a point allowed by a Committee.

as an instance that Committees occasionally permitted second arguments on questions of importance, he cited the *Fowey case* (*i*). Mr. Follett and Mr. Cockburn resisted this application; but after considerable discussion, the Committee determined, that the point should be re-argued by one counsel on each side.

Mr. Follett:

The former decision, "that deeds produced by a sitting member without notice, must be proved by a petitioner before they can be admitted in evidence," confirmed.

The general and undisputed doctrine in all our courts of law is, that "whenever a deed or other instrument is subscribed by an attesting witness, such witness must be called to prove its execution, and his testimony cannot be dispensed with, though the defendant has admitted the execution in an answer to a Bill in Chancery." The rule is thus stated by Mr. Roscoe, in his Digest of the Law of Evidence (*k*); but there is in reality no occasion to cite authorities to prove the constant and daily practice of every court in Westminster-hall. The same rule has always been enforced in Committees of the House of Commons, and in this session, the petitioners in the *Bath* and *Coventry* cases (*l*) have been obliged to prove the title-deeds of the sitting members. What reason is there then that the ordinary rules of evidence are to be dispensed with in this case? Had even a notice to produce this deed been served on the sitting member, the other side must have proved the execution of it, if they meant to avail themselves of it in evidence. This, Mr. Phillips (*m*) lays down as the general rule of evidence, in accordance with the case of *Gordon* v. *Secretan* (*n*), where Lord Ellenborough said, "it was not enough to give notice to the opposite party to produce an instrument in his hands, in order to dis-

(*i*) Colb. & Dan. 145. George Jewell's case. (*k*) P. 64.
(*l*) See note, *ante*, p. 381.
(*m*) Phillips on Evidence, 1st vol. p. 499.
(*n*) 8 East, 548.

pense with any further proof of it by the party giving the notice, but that the production of it at the trial, in pursuance of such notice, did not supersede the necessity of proving it by one of the subscribing witnesses, if any, as in ordinary cases." It is true, that there are exceptions to this general rule, and where a party has produced, in obedience to a notice, a deed under which he claims the matter in dispute, he has not been called upon to prove it, as in the cases of *Pearce* v. *Hooper* (*o*), and *Orr* v. *Morrice* (*p*); but no instance can be found in which the proof of an instrument has been dispensed with, where no notice to produce it had been served, and no secondary evidence could consequently be given of its contents. The deeds here have been produced, and if the petitioner can prove them, he may make use of them, but not otherwise.

Mr. Harrison:

No instance has ever occurred in which the reading of deeds produced by a sitting member, as those on which he founds his qualification, has been objected to. It is true, that in most of the cases which have occurred in courts of law on similar subjects, a notice to produce appears to have been served, because from the forms of proceedings there, it is technically necessary that it should be given. But the rules of evidence do not require such an absurdity, as to oblige a man to prove his adversary's title deeds, when he comes forward to dispute his title. The effect of a notice is to compel the production of deeds; when they are produced, (it matters not how,) they are evidence in the cause; *Bowles* v. *Langworthy* (*q*), *The King* v. *Middlezoy* (*r*), *Orr* v. *Morrice* (*s*), *Pearce* v.

(*o*) 3 Taunton, 62.
(*p*) 3 Brod. & Bing. 139.
(*q*) 5 T. R. 366.
(*r*) 2 T. R. 43.
(*s*) 3 Brod. & Bing. 139.

Hooper (*t*). In this latter case, Sir J. Mansfield, after referring to a case which was mentioned in *Gordon* v. *Secretan*, of an heir at law being called on to produce a will, against which he claimed the estate of his ancestor, and where it would be hard to say, that the will should be taken as proved against him because he produces it, says, "but that is very different from the case where a man is called on to produce a deed under which he holds an estate. The plaintiff has no interest in the fee-simple of the estate, if the deed does not convey it; if then he produces the deed under which he claims, shall it not be taken as a good deed, so far as relates to the execution as against himself?" *Burnett* v. *Lynch* (*u*) is, however, a case perhaps still more precisely in point with the present. There the action was brought for the breach of covenants in a lease; the plaintiffs proved a counterpart; the defendants produced the original lease, and contended that the plaintiff ought to be obliged to prove it by the attesting witnesses; but both Lord Wynford, who tried the case at *nisi prius*, and the Court of King's Bench, before whom it came on a motion for a new trial, held, that as the lease was produced by a party claiming a beneficial interest under it, proof of its execution by an attesting witness was unnecessary. No notice to produce the lease had been served in that case, a circumstance which meets the arguments, therefore, urged by the other side on the ground of want of notice. In fact, however, we did give notice to produce the will of Mrs. Bulwer's father, and Mr. Bulwer's marriage settlements, which we supposed were the instruments on

(*t*) 3 Taunton, 62.

(*u*) 5 B. & C. 589. See also *Doe* v. *Heming*, 6 B. & C. 28; & *Vacher* v. *Cocks*, 1 B. & Ad. 147, where the exception in *Pearce* v. *Hooper* was held not to be applicable to a case, "where the party wishing to make the deed evidence, had had it a long time in his custody, and might therefore have been prepared to prove the execution."

which he founded his qualification. When we come before the Committee, other deeds, of which we had no knowledge, are produced, on which Mr. Bulwer's qualification depends. Is it not contrary to common sense to say, that we who impugn that qualification should be called on to prove the validity of these deeds? If they are not valid, Mr. Bulwer has no qualification; if they are, as they have been produced by a party claiming an interest under them, we are entitled, in accordance with all the decisions on the subject, to read them, and use them as evidence.

Mr. Follett, in reply:

The deed in question was not produced by Mr. Bulwer in proof of his qualification, for he was not called upon to prove it. In all Committees the presumption is, that the sitting member's qualification is a good one, and it lies on the petitioners to disprove it. Admitting then to the fullest extent the rule, that where a party produces a deed under which he claims an interest, the other side are not obliged to prove it, how does that rule apply to the present case? We do not say that Mr. Bulwer claims an interest under this deed; the petitioner cannot say so, unless he can show it from the deed itself, and he cannot read the deed for that purpose, until he has made it evidence by proving it in the regular way. It is said, that no notice to produce was served in the case of *Burnett* v. *Lynch*, and it is argued from thence, that deeds may be read without notice to produce them having been served; but the only reason why the general rule was dispensed with in that case was, because a counterpart of the lease in question there was produced and proved. Let the petitioner produce a counterpart here of the deed, and then *Burnett* v. *Lynch* will apply. No case can, however, be cited, where a party has been allowed to read a deed,

produced by one upon whom no notice to produce has been served, and who claims no interest under it.

The Committee determined that the deed should not be read.

In the case of a petition against a member, on the ground of want of qualification, it is incumbent on the petitioner expressly to prove the disqualification in every particular.

Mr. Preston then proposed to show, from the particular given in, that Mr. Bulwer had no qualification. Mr. Follett and Mr. Cockburn objected to this course, on the ground that the petitioner was bound to have made out a case by evidence, which he had failed to do, and that he could not read the particular as secondary evidence of the contents of deeds, which he had given no notice to produce. The Committee, however, over-ruled the objection, and afterwards refused to permit Mr. Follett to recall Mr. Beavan to prove by him the birth of a child of Mr. Bulwer's; but that fact was subsequently admitted.

Mr. Preston, for the petitioner:

The statute 9th Ann, cap. 5, provides, "that no person shall be capable to sit or vote for any city or borough, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate, either in law or equity, to or for his own use or benefit, of or in lands, tenements or hereditaments, over and above what will satisfy and clear all incumbrances affecting the same, of the annual value of 300 *l.*, above reprises." Mr. Bulwer has, as we contend, no such estate, and therefore is not entitled to retain his seat. In the first place, he states his qualification to consist of certain lands in Ireland now out upon leases, granted by his wife and his wife's father, and of which consequently he must be possessed in right of his wife. Wherever the Legislature has intended property possessed in right of a wife to confer a qualification of any kind, it has expressly mentioned it, as of killing game, under the 1st James 1, c. 27, s. 3, and 22d & 23d Charles 2,

c. 25, s. 3, and of acting as a commissioner of turnpike trusts, under the Turnpike Acts (*x*). There is no mention of an estate in right of a wife in the qualification required by the 9th Ann; and such an estate, which only exists during the joint lives of the husband and wife, is obviously a less estate than an estate for the husband's own life (*y*), and does not constitute the estate required by that statute, which is for his own life, or for some greater estate. It is true, that if Mr. Bulwer is the father of a child, and if the property in question were in possession, he would be entitled to an estate in it for his own life by the curtesy, but the most considerable part of it is, according to his own particular, subject to a freehold lease for three lives, and there is no proposition of law more certain, than that there is no estate by curtesy of a reversion expectant on a freehold. Bac. Abrid., tit. Bar. and Fême, letter C, s. 1. Com. Dig., tit. Bar. and Fême, letter E; *Polybank* v. *Hawkins* (*z*); *Doe* v. *Rivers* (*a*); Preston on Estates (*b*.)

If, however, the Committee should be of opinion, that Mr. Bulwer has a sufficient estate in the Irish property, still that would give him only a qualification to the amount of 207*l.* 4*s.* 1*d.* per annum. The remainder of his qualification consists of two annuities, amounting to 210*l.*, on lands in England. The first of these is the annuity of 180*l.* granted to him by Miss Thackthwaite. A memorial of the deed by which this annuity is granted, ought, according to the directions of the Annuity Act, to have been enrolled in Chancery, &c. within 30 days after its execution: this has not been done, and consequently, according to the provisions of that Act, the annuity is null and void to all intents and pur-

(*x*) 3 Geo. 4, c. 126, s. 62.
(*y*) See *Rex* v. *Powell*, 8 T. R. 639.
(*z*) Douglas, 329.
(*a*) 7 T. R. 276.
(*b*) Vol. 1, p. 215.

poses (*c*). Had, indeed, the property upon which the annuity is secured been of equal or greater value than the annuity itself, the case would have been excepted from the provisions of this Act by the 16th section; but the annual value of the property, at the rents at which it is now let, is only 166*l.* 10*s.*, and consequently of less amount than the annuity. Another strong objection against this deed (if it were wanted) is, that although the property is in the county of Middlesex, it has not been registered in pursuance of the Register Act (*d*). The other annuity of 30*l.* is not stated in the particular to have been granted for the life of Mr. Bulwer, and consequently may be only for a term of years. Were even these English annuities, without incumbrances, sufficient to bestow a qualification, it must be remembered, that the Act of 9 Ann required that the estate should be over and above what would satisfy all incumbrances: now here is a judgment against Mr. Bulwer for 700*l.*, and after deducting that amount from his English property, it is impossible to say that he would have 300*l.* a year above reprises. Another point for the consideration of the Committee is, that he did not originally give in at the table of the House the names of the same parishes as those in which he now describes his property to be situate. Relying, therefore, on all these objections, but principally on those relating to the Irish property, which were first urged, we trust for the decision of the Committee in our favor.

Mr. Follett, for the sitting member:

The account of Mr. Bulwer's qualification, which he delivered in at the table of the House when he was sworn, is not before the Committee; they cannot, therefore, judge whether it is the same as that which he has stated in the particular now before them. Were it,

(*c*) 53 Geo. 3, c. 141, sect. 2. (*d*) 7 Ann, cap. 20. sect. 1.

however, different, it would be a circumstance of no consequence; all that is required is, that a member should be in possession of a qualification; he may give in as many different accounts of it as he chooses. If, however, his qualification is disputed, he is obliged, by the rules of the House, to give in a paper signed by himself, containing a rental or particular of the lands, tenements and hereditaments whereby he makes out his qualification; not, as is supposed in the arguments on the other side, his title to those lands, tenements and hereditaments. No process in law or in equity would oblige him to expose his title-deeds to the inspection of strangers, much less a resolution of the House of Commons. He is not required to state, how he is possessed of these lands, whether in fee-simple, fee-tail, in his own right, or in right of his wife. It would be most unjust were he required to do so, and thus give opportunities for conveyancers to raise doubts and difficulties on his title, which, even were they unfounded, might expose him to long litigation and expense. The resolutions of the House, however, Mr. Bulwer has complied with; he has given in a rental or particular of the estates by which he is qualified to sit in it. What then is the evidence brought forward to dispute his qualification? It was not attempted to prove that he was not in enjoyment of the property, but it was said, because it appeared on the face of the particular that part of it was subject to a lease granted by his wife previously to their marriage, that he was possessed of it, not in his own, but in her right. Why were the Committee to imagine a fact, which was not stated by Mr. Bulwer, and which was not proved by his opponent? Might he not have purchased this property of his wife before their marriage? Nay, might it not, on their marriage, have been settled, in the common and ordinary way in marriage settlements, on him for his life? The rule has always been, that every presump-

tion should be given in favor of the member who had sworn that he was qualified; and if so, are not the Committee bound to adopt one of these latter suppositions in preference to the one, equally unsupported by proof, that was pressed upon them by the other side, whose duty it was to have proved an express disqualification? Another part of the estates mentioned were stated in the particular to be subject to a lease granted by Mr. Wheeler. It was supposed by the other side that he was the father of Mrs. Bulwer, and then the same objections were raised: where, however, was the proof of this assertion? Mr. Bulwer might have purchased this property of Mr. Wheeler, have acquired a life estate in it under his marriage settlement, if he was Mrs. Bulwer's father, or it might even have been left by his will to his daughter till she married, and then to her husband for life. It mattered not what was the fact; until the contrary was proved, everything ought to be assumed in favor of the sitting member. Admitting, however, that this Irish property was derived from Mrs. Bulwer, and that there was no settlement, the particular stated, that it was subject to a lease for lives, renewable for ever, and Mr. Bulwer would, if there was a child of his marriage (as was now not denied) be entitled to an estate for his own life, by the curtesy, in the rent (*e*).

The objections that have been made to that part of the qualification which depends on the English property, are quite untenable. Annuities granted out of freehold and copyhold lands in Great Britain and Ireland, of equal or greater value than the annuities, are expressly excepted out of the operation of the provisions of the Annuity Act. The value of the lands out of which the annuity of 180 *l.* per annum has been granted by Miss Thackthwaite,

(*e*) See Butler's Co. Litt. 29, a., note 7. *sed. qu.* see Cruise Dig. vol. 1. tit. V. Curtesy, ch. 1, s. 13.

is proved to be at least 187 *l.* per annum. The actual rental at this moment indeed is less; but it is the value, and not the rental, which is required, in order to come within the exception in the statute; and there was therefore no occasion whatever for the enrolment of a memorial of the annuity deed, which is perfectly good without it. The Registry Act for Middlesex only renders unregistered deeds invalid as against subsequent purchasers; as between the parties, they are binding, whether they are registered or not. Neither of these objections can affect, therefore, the validity of the larger annuity. As to the annuity of 30 *l.* per annum, the only objection raised against it is, that Mr. Bulwer has not stated in his particular, that it has been granted for his own life. The answer to this is, that the resolutions of the House do not require him to do so, and not having stated what he was not called upon to state, the Committee are bound to presume that he has a sufficient estate in it. The only remaining objection is on account of the judgment: taking the interest of the debt secured by that judgment, however, at 10 *l.* per cent., it would amount to 70 *l.* per annum, and if that was deducted from the income of the other property contained in the particular, it would still leave Mr. Bulwer in possession of an income of 347 *l.* a year from lands, which is more than is required by the statute of Ann. Who ever heard, however, of searching for judgments as incumbrances on a freehold for parliamentary purposes. It was a common objection to a man's having a vote for a county, that the value of his freehold was diminished, by the interest payable on a mortgage, below 40 *s.* per annum, because that was a specific incumbrance on the particular property; but no one had ever made an objection of this kind, on the ground of a judgment having been obtained against a freeholder. No interest was, strictly speaking, payable on a judgment;

and although the person in possession of it might, in preference to proceeding against the person, or the goods and chattels of his debtor, sue out an elegit, and thus obtain possession of half of his lands, yet until he did so, he had no claim whatever upon those lands. If, however, this judgment is an incumbrance, it generally affects all the landed property of Mr. Bulwer, and not only that part of it which he has chosen to mention in his particular. All that could be required of a member was, to set out in his particular a sufficient quantity of lands, tenements and hereditaments to give him a qualification; it was not necessary for him to insert in it a description of all his estates; and it is by no means to be assumed, that Mr. Bulwer had not other landed property sufficient to satisfy this judgment, in addition to what he had laid before the House as entitling him to a seat in it. Besides, why was this judgment to be considered as an incumbrance at all? It might have been confessed, (as indeed was the fact) in order to serve as a security for the payment of a debt by a friend, and that debt might since have been paid, although satisfaction had not been regularly entered upon the rolls. Although no proof was brought of this fact, because it was not necessary, yet the Committee, if they attached any weight at all to the circumstance of this judgment, were bound to take any supposition in favor of a sitting member. Upon the whole, the petitioner had not, in any particular, established a case of disqualification against the sitting member, and his petition must therefore be dismissed.

The Committee resolved, that the petitioner had failed to prove his case; that the sitting member was duly elected, and ought to have been returned; and that neither the petition nor the opposition to it appeared to be frivolous or vexatious.

CASE XXI.

COUNTY OF CARLOW *.

The Committee was appointed on the 14th of May 1833, and consisted of the following Gentlemen;

Sir Robert Heron, Bart., M. P. for Peterborough, *(Chairman.)*

Joseph Hume, Esq. M. P. for Middlesex.
Charles March Phillipps, Esq. M.P. for North Leicestershire.
John Jervis, Esq. M. P. for Chester city.
Benjamin Hall, Esq. M.P. for Monmouth, &c.
The Hon. George Elliott, M.P. for Roxburghshire.
John Fenton, Esq. M.P. for Rochdale.
Henry Lambert, Esq. M.P. for Wexford County.
John Beaufoy Rooper, Esq. M. P. for Hunts.
James Brougham, Esq. M. P. for Kendal.
Sir Wm. Molesworth, Bart. M. P. for East Cornwall.

Petitioners:—Henry Bruen and Thomas Kavanagh, Esqrs, (candidates), and Electors.
Sitting Members:—Walter Blackney & Thos. Wallace, Esqrs.
Counsel for the Petitioners:—Mr. Harrison, Mr. Follett and Mr. Alexander.
Agents:—Messrs. A. & R. Mundell.
Counsel for the petitioners defending the return:—Mr. Serjt. Merewether and Mr. D. Pollock.
Agent:—Mr. Baker.

THE petition contained allegations, that many persons who had voted for the sitting members were not duly registered, inasmuch as they had not taken or sub-

* For the notes of this case the Reporters are indebted to their friend Mr. Finnelly.

scribed, at the time of their alleged registration, or at all, the oaths and affidavits required by law; that many other persons were registered in respect of freeholds and leaseholds of not sufficient yearly value to confer a qualification to vote, and many others, although they had not been for six months previous to their respective registries in possession of the premises in respect of which they were registered by virtue of any sufficient title or estate; it also contained charges of intimidation and improper conduct by the Roman-catholic clergy, and an express allegation that neither of the sitting members had a sufficient qualification to entitle them to be elected or returned. The prayer was, that the petitioners, Henry Bruen and Thomas Kavanagh might be declared to have been duly elected.

The numbers at the close of the poll were:

Mr. Blackney - - -	657
Mr. Wallace - - -	657
Mr. Bruen - - -	483
Mr. Kavanagh - - -	470

The sitting members had given notice that they should not defend their seats, and the case was conducted on behalf of electors, who had been admitted to defend it in their stead.

The counsel for the petitioners commenced their case with the scrutiny, and the first vote they proposed to question was that of James Brohan, who was objected to on the ground of not having been in possession of the premises in respect of which he was registered for six calendar months previous to his registration.

James Brohan's case. It is not competent to a Committee to enter into an examination of a voter's qualification, where his name stands upon the register.

Merewether, Serjt. for the petitioners defending the return:

Objected to entering upon this case, on the ground that the registry of votes by the barrister was conclusive, and that the Committee had no power to alter it.

The Committees in the *Petersfield, Oxford, Bedford* and *Southampton cases* (*a*), had concurred in deciding, on the English Reform Act, that they had no jurisdiction to open the register. A determination of a similar nature had been made on the Scotch Reform Act in the *Linlithgow case* (*b*). On the Irish Act a contrary determination had indeed been obtained in the *Longford case* (*c*), but it was to be hoped that the authority of that single decision would not be considered so strong as to induce the Committee, in opposition to the plain words of the Act, to open the register in this case. The manner in which the registration of votes was conducted in Ireland, as directed by the 16th section of the Irish Reform Act, differed from that which had been directed in England, inasmuch as it imposed on the voter in Ireland in all cases the affirmative proof of his qualification. The mode of proceeding laid down in that section was enforced by several other provisions in the Act, and the registration under those provisions was made conclusive by the 54th section. It would, no doubt, be argued on the other side, that it was conclusive at the poll only, and did not prevent the Committee from entering upon the proposed investigation.

Their attention however would, he confidently trusted, be directed to the 59th section, the object of which clearly was, to provide for the case of a disqualification arising after registration, and a power in that event was given to a Committee of the House of Commons to strike off the vote. That clause would be quite useless, if the Committee had in all cases the power which would be contended for on the other side; indeed the giving expressly the power in one case is evidence of the intention of the Legislature not to give it in others, according to the maxim, "*Expressio unius est exclusio alterius.*"

(*a*) *Ante*, pp. 51, 74, 122, 236.
(*b*) *Ante*, p. 280.
(*c*) *Ante*, p. 179.

He conceived that when a clause gave a Committee a certain duty, they should be limited to that duty. If this inquiry were open here under the Reform Act, and the inquiry by commission also in Ireland (of an application for which in the present case the defending petitioners had given due notice), it was clear that the person who had the longest purse would always carry the election.

Mr. Follett, for the petitioners:

The effect of the argument on the other side was, that the House of Commons was no longer to be trusted with the power of investigating the qualifications of voters, but that it was consigned, without appeal, by the Irish Reform Act, to a registering barrister of six years standing, deputed by the Lord Lieutenant. The point before the Committee arose in the *Longford case* (*d*), and was decided; it was again raised and argued in the *Galway case* (*e*); and it was a third time re-argued and re-decided in the *Coleraine case* (*f*), and all these three Committees held, that they had full power to examine into all the votes on the register. If a barrister rejected a vote there was an appeal to the judge of assize, but no appeal to him if the vote were put on the register; so, according to the argument on the other side, there would be no power any where to inquire into the validity of admitted votes. By the former statutes in Ireland the barrister had the power to investigate the vote, and there was also an appeal to the judge. Now the Reform Act made the registry conclusive at the poll: the returning-officer was bound to admit to poll every person bringing his certificate from the assistant-barrister, but a direct appeal was given from the barrister to the House of Commons. The 60th section of the English Reform Act gave an appeal to Committees in cases

(*d*) *Ante*, p. 179.
(*e*) *Ante*, p. 308.
(*f*) *Post*.

where a name had been either improperly admitted, or improperly rejected by the barrister upon claim or objection. The Irish Act was different, and did not prevent an appeal even in cases where no objection had been made before the barrister. The vote under discussion had been objected to below, so that by the decisions both under the English and Irish Acts the power of appeal to a Committee still remained. The 54th section of the Irish Act must be interpreted as leaving the right of inquiry into the validity of votes to the House of Commons, for it was a legitimate inference from the fact of all power of inquiry having been taken away by that section at the poll, that a power of that nature was reserved to the House. The great struggle of the House of Commons at all times, and particularly during the passing of these Acts, had been to reserve to themselves the power of final inquiry into elections. The 59th section did not limit that power. It was never the intention to oust the jurisdiction of the House of Commons; if it had been, it would have been easy to have found words to express such an intention.

Merewether, Serjt. (in reply), distinguished the case before the Committee from that of *Longford*, in which the petitioners had produced three witnesses who proved the inadequate value of the qualification of several of the persons objected to; and on that ground, the Committee decided to go into such cases, expressing at the same time their regret at departing from the decisions on the English Act. It was now settled beyond dispute, that the jurisdiction of the House of Commons was taken away by implication in the English Reform Act, because certain specific powers were given or reserved to Committees; the inference drawn from which was, that other powers not so reserved were taken away. Why was not the same reasoning to be applied to the Irish Reform Act? The two Acts were passed in *pari*

materiâ, and the like construction ought to be put on them. There were indeed stronger reasons for putting the construction he had contended for on the Irish than on the English Act, for the expense of bringing up witnesses in cases of scrutiny of this sort was comparatively trifling in the latter country.

The Chairman stated, that after the most anxious deliberation, the Committee were of opinion that they ought not to enter into the qualification of James Brohan.

Byrne's case. An irregularity in his affidavit of registry will not affect the voter, it being the duty of the barrister to see that the affidavit signed by him is correct.

Mr. Alexander then proposed to question the vote of Thomas Byrne, the objection to him being, that the affidavit signed by him did not contain the words "that I am in the actual occupation thereof," required by the form in Schedule C. No. 7, 2 & 3 Wm. 4, c. 88. He was a 10 *l.* leaseholder, and of the class to which that part of the oath applied.

Mr. Humphreys, clerk of the peace for the county, produced the affidavit taken by Byrne, which did not contain the words in question. He said that the printed forms of affidavit were supplied by the agents, whose fault it was, if there was any omission.

Mr. Alexander, in support of the objection, referred to the 19th sect., which required every voter to verify his title by affidavit, and to subscribe the oath stated in Schedule C, with which provisions, it was clear, that the voter had failed to comply.

Mr. Pollock submitted, that the resolution to which the Committee had come was conclusive against this objection. This voter was admitted by the assistant-barrister upon this affidavit, and was admitted to poll afterwards.

The Chairman read the 20th section, and said the words of it were conclusive against the objection. This was the opinion of the Committee. It was the duty of the barrister to see that the affidavit signed by him was

in the form required. Was the voter to suffer through the fault of the assistant-barrister?

Mr. Pollock was about to continue his argument, but was stopped by the Committee, who then decided against entertaining the objection (*g*).

The next case taken was that of Patrick Doyle, who was objected to on the ground of not having taken the Catholic oath, directed by the 10 Geo. 4, c. 7.

Patrick Doyle's case. It is not necessary for Roman-catholics in Ireland to take the oath required previously to their voting by the Catholic Relief Act, 10 Geo. 4, c. 7.

Mr. Pollock submitted, that after the resolution to which the Committee had come on the previous day, that the certificate given to the voter on being registered, was conclusive of the right of voting, and that they had not power to investigate the right afterwards, it must also be held to be conclusive of the fact of all necessary oaths having been taken.

The Committee determined, that they would first hear the facts of the case.

A copy of the oath taken by the Catholic voters at the election was produced by the clerk of the peace from the original in the Rolls-office in Dublin, to which it had been sent by him on receiving it from the commissioners. This oath varied from the form of oath prescribed by the 10 Geo. 4, c. 7, s. 2, in several particulars. The most important of them was the omission of the words, "I do solemnly swear that I never will exercise any privilege to which I am or may be entitled to disturb or weaken the Protestant religion, or Protestant government, in the United Kingdom." The copies of the oath administered to the voters had been given to the commissioners by the clerk of the peace; they had been copied by his clerks, as he thought, from the 10 Geo. 4, c. 7, and he

(*g*) After this decision an adjournment took place until the following day at the request of Mr. Follett, who said he had been taken by surprise by the first decision of the Committee.

was not aware, until he came into the Committee-room, that there was a mistake in the form (*k*).

Mr. Blackney, the sitting member, was himself one of the commissioners who administered this oath.

Mr. Follett, for the petitioners:

The question with respect to the class of voters to which Patrick Doyle belonged would turn entirely upon the Irish statutes with respect to the right of voting of the Catholic freeholders and leaseholders of Ireland. The Committee were aware, that after the Revolution of 1688, Roman-catholics were prevented from taking part at elections, or from holding any office in the government. The first statute precluding Roman-catholics from voting was the 1st of Wm. & Mary, c. 8. In the 1st year of George the Second an Act was passed "for the further regulating the election of members of Parliament, and preventing the irregular proceedings of sheriffs and other officers in electing and returning such members (*i*)." This statute was passed to prevent persons not actually convicted of being papists from voting (*k*). In the early part of the reign of George the Third the restrictions were much relaxed. In 1773 an Act of the Irish parliament was passed (*l*), entitled, "An Act to enable His Majesty's subjects, of whatever persuasion, to testify their allegiance to him," which, after reciting "that many of his Majesty's subjects in that kingdom were desirous to testify their loyalty and allegiance to His Majesty, and their abhorrence of certain doctrines imputed to them, and to remove jealousies

(*k*) The form of oath in the 13 & 14 Geo. 3, c. 35, (Irish Act) will be found to be the same with that administered, except that the words in that Act relating to the Pretender Charles the Third, were not copied out by the clerk.

(*i*) Irish Act, 1 Geo. 2, c. 9.

(*k*) 1 Geo. 2, c. 9, s. 7.

(*l*) 13 & 14 Geo. 3, c. 35.

which thereby had for a length of time subsisted between them and others His Majesty's loyal subjects, but on account of their religious tenets were by the laws then in being prevented from giving public assurances of such allegiance, and of their real principles and good-will and affection towards their fellow-subjects," proceeded to enact, that any person professing the popish religion might go before the judges of the King's Bench, or before a justice of the peace, or magistrate for the county or city where he might be resident, and take and subscribe the oath and declaration therein mentioned, which, having been much altered by the 10 Geo. 4, c. 7, it would be unnecessary to read at length. The second section of that Act provided for a yearly list, to be returned to the clerk of the Privy Council, of the persons who should have taken and subscribed such oath in the preceding year. In the year 1793 another Act was passed (*m*), by which it was enacted, "that such parts of all oaths as were required to be taken by persons in order to qualify themselves for voting at elections of members to serve in Parliament, and also such parts of all oaths required to be taken by persons voting at elections for members to serve in Parliament, as imported a denial that the person taking the same was a papist, or married to a papist, or educated his children in the popish religion, should not thereafter be required to be taken by any voter, but should be omitted by the person administering the same; and that it should not be necessary, in order to entitle a papist or person professing the Roman-catholic religion to vote at an election of members to serve in Parliament, that he should, at or previous to his voting, take the oaths of allegiance and abjuration, any statute then in force to the contrary of any of the said matters in any wise notwithstanding." That Act then went on, in the 7th section, to give fur-

(*m*) 33 Geo. 3, c. 21.

ther relief to the Roman-catholics, by enabling them to hold civil and military offices, provided they should take and subscribe the oath appointed by the 13th & 14th Geo. 3, c. 35, and also the oath and declaration mentioned in that section. By the 14th section it was provided, that no benefit should be taken under the Act by any Roman-catholic unless he should have first taken and subscribed the oath and declaration by that Act prescribed, and also the oath appointed by the 13th & 14th Geo. 3. The 15th section provided for the granting of certificates to persons who had taken and subscribed the oaths, which certificates were by the 16th section required to be produced by the Roman-catholic seeking to vote. This was the guard and protection thrown round the poll by the 33d of Geo. 3. This mode of giving the qualification to vote had been altered by subsequent statutes, but the necessity for taking the oath had not been dispensed with. By the 37 Geo. 3, c. 47, s. 19, the oaths and declarations might be taken and subscribed at any time before the teste of the writ; and by the 51 Geo. 3, c. 77, s. 3, at any time before offering to poll. The 4th section of that Act provided for the appointment by the returning-officer of two or more justices of the peace, as commissioners to administer the oaths and declarations, in some convenient part of the court or place where such election should be carrying on, and for the attendance of the clerk of the peace or his deputy to give certificates to the parties taking and subscribing them. This was the last Act of Parliament on the subject before the passing of the Catholic Relief Bill. Upon these statutes it was quite clear, that if a Roman-catholic had voted without taking the oaths, his vote might have been struck off the poll.

The question then was, what alteration had been made by the Catholic Relief Bill? The oath required by that Act was set out in the 2d section, which related to members of either House of Parliament. The 5th

section then enabled persons to vote at elections, upon taking and subscribing the oath thereinbefore appointed and set forth, instead of the oaths and declaration then required; but it was observable, that no place was mentioned at which the oath was to be taken. The following provision, however, was contained in the 6th section, "that the oath shall be administered in the same manner, at the same time, and by the same officers, or other persons, as the oaths for which it is hereby substituted are or may be now by law administered; and that in all cases in which a certificate of the taking, making or subscribing of any of the oaths, or of the declaration now required by law, is directed to be given, a like certificate of the taking or subscribing of the oath hereby appointed and set forth shall be given by the same officer or other person, and in the same manner as the certificate now required by law is directed to be given, and shall be of the like force and effect." As then, before this Act, Irish Roman-catholic voters could not vote until they had taken the oaths prescribed by the 13 & 14 Geo. 3, c. 35, and the 33 Geo. 3, c. 21, so the 10 Geo. 4 obliged them to take the oath prescribed by that Act in the same manner, before the same persons, and at the same time, as those required by former Acts. It would be in the recollection of some honorable members, that in the *Limerick* (*n*) and *Galway Town* (*o*) cases votes had been struck off, because the wrong oath had been taken. The Irish Reform Act had not dispensed with the oaths required to be taken by the clerk of the peace and by the commissioners under the 51 Geo. 3, c. 77, to administer the oath, and to give certificates. The only ground, then, which could be relied upon on the other side, was afforded them by the 54th section of the Irish Reform Act, which had pro-

(*n*) Minutes, 3d May 1830. (*o*) Minutes, 3d March 1831.

vided for persons being admitted to vote upon their taking the oaths thereinafter mentioned, without any other oath or examination. That section, however, applied only to oaths which could be taken at the poll, and the taking the Catholic oath there would not, under the former Acts, have entitled Roman-catholics to vote. In a work of considerable authority in Ireland (*p*), the following observations occur on this subject: "An arrangement has been frequently adopted at elections, with the consent of the candidates, for dispensing with the oaths directed to be taken by Roman-catholics, the propriety of which seems to be very questionable: the words of the 33 Geo. 3, c. 21, sect. 16, are strongly negative, 'and no Roman-catholic shall at any time be capable of giving his vote until he shall have first produced or shown to the sheriff, or his deputy, the certificate of his having taken and subscribed the oaths; and such person so producing such certificate shall be then permitted to vote, but *not otherwise.*' This enactment must therefore be considered as establishing an additional qualification to entitle Roman-catholics to exercise the elective franchise, and as mandatory and imperative in its effect; in which case, no consent of the candidates can dispense with the positive law; Glanv. 103." He says further, "In England, Roman-catholics have been held to be disqualified if they refused the oaths of allegiance, supremacy and abjuration, 2 Lud. 567. It would seem, therefore, though no advantage of the omission to swear Roman-catholics should be taken by the candidates by reason of their consent, yet that an objection on that ground might still be raised by an elector upon petition, and the votes affected by it would be invalidated, as in the recent case of the Limerick petition." (*q*)

(*p*) Robinson on the Laws of Registry, 67 n. (*q*) Ibid.

A member of the Committee:—The 19th section of the Irish Reform Act provides an oath in lieu of former oaths.

Mr. Follett:—That section applied to the registry, and not to voting. Catholics were still, before voting, required to take the oaths formerly imposed by previous statutes. The practice of taking those oaths before voting was always acted upon, except in the case of the late Cork election, the petition in which was not proceeded with, as the recognizances had not been entered into. An oath, indeed, had been administered to these voters, but it had been shown to be different from that required by the 10 Geo. 4, c. 7, in this important particular, that the words there introduced with much anxiety, for the protection of the Protestant religion, had been wholly omitted. Upon the law, therefore, and upon the facts of the case, he submitted that the vote ought not to be permitted to remain upon the poll.

Mr. Pollock:

There were two questions for the Committee to decide upon: 1st, Whether it was now necessary that this oath should be taken by Catholics? and, 2dly, If it was necessary, whether these voters ought to be damnified by taking the only oath that was tendered to them, although it differed from the one prescribed by the Act? He admitted that in the *Limerick* and *Galway* cases the oath was decided to be necessary. These cases, however, were both decided previously to the passing of the Reform Act. The 19th section of that Act provided, that where the barrister declares any claimant entitled to be registered, "he shall verify his title by affidavit, and shall take and subscribe (as the case might be) the oath stated in Schedule C. to that Act annexed, instead of any oath or oaths which by the law now in being he would be liable to take or subscribe." The oath now under discussion was clearly one of the oaths, which by the

law then in being was required of voters; it was equally clear that it was now done away with, and the oath in Schedule B. of the Reform Act substituted for it. In order to prevent, however, any doubt, the Legislature proceeded to direct, in the 28th section, that a certificate of his registry should be given to each voter, and in the 54th section, that this certificate, or in default of its production, the original affidavit of registry, "should be conclusive of the right of voting of the person named therein; and that the returning-officer or his deputy, upon the production of such certificate or affidavit, and upon his taking the oaths thereinafter mentioned, if required so to do, should admit such person to vote without any other oath or examination." The oaths thereinafter mentioned, it was needless to say, were not the oath now in question; should therefore a returning-officer or deputy refuse to admit any voter to the poll on account of his not having taken this oath, he would act in direct violation of the express words of the statute. Parliament, doubtless, wished to abolish all vexatious distinctions between Protestants and Catholics. It was remarkable, indeed, that in no part of the Act were Roman-catholics named. The words it used when it bestowed the franchise on any class were, "every male person of full age, and not subject to any legal incapacity." The words "legal incapacity," could not be interpreted to comprehend the omission to take oaths. These oaths were not taken at all at the late Cork election, because they were rightly not deemed necessary. A petition against that election on that ground had been presented, but it was not proceeded with; and the fair inference from the abandonment of it was, that the petitioners were advised that they could not succeed.

Upon the second point, he argued, that it was the duty of the clerk of the peace, or his deputy, according to the provisions of the 51 Geo. 3, c. 77, sect. 4, to attend the commissioners administering the oaths, and to pre-

pare the form of oath. The person whose duty it was to have done this came now as a witness to falsify his own acts, and put in peril the elective rights of so many voters; but he was not present at the administration of the oath. How then was it proved, that the copy of the oath which was produced was the oath administered to Patrick Doyle? Why were neither the commissioners who administered the oath, the deputies who attended, or Patrick Doyle himself, produced to prove that this was the identical oath taken? The 23d section of the 10 Geo. 4, c. 7, disposed, however, of the question; for it directed, that the certificate of the proper officer should be sufficient evidence of the person therein named having taken and subscribed this oath. A certificate had been given to Patrick Doyle of his having taken the oath, and that fact could not therefore be disputed. Were the Committee to decide, that the taking of the defective oath should destroy the vote, they would place the whole of the franchise in the hands of the clerk of the peace.

Mr. Alexander, in reply:

The certificate was not made conclusive evidence of the right to vote by the 10 Geo. 4, the 23d section of which Act applied to other incapacities. Here, at any rate, the certificate could not be evidence that the oath had been taken, for the contrary was proved. This very question had been considered in the *Limerick* and *Galway* cases, and in both, the Committees decided, that the oath in the 10 Geo. 4 was necessary in its precise terms. "Legal incapacity" extended to disqualification for not taking oaths. Did the Committee forget the struggle in Parliament, on the passing of the Catholic Relief Act, to make this oath particular, complete and comprehensive? Could the Legislature, in one or two years after, be supposed to have abandoned the security of that oath, about which they had taken so much trouble?

The 5th section of the 10 Geo. 4, c. 7, expressly required the oath to be taken and subscribed as a qualification to vote at elections. It was not the duty of the clerk of the peace to give out the form of oath; his erroneous sense of his duty could not dispense with the oath required by an Act of Parliament. By the operation of the 55th section of the Irish Reform Act, saving existing laws not repealed or altered by that Act, the provisions of the Catholic Relief Act remained in force.

After considerable deliberation, the Chairman informed the counsel for the petitioners, "that the Committee had come to the decision, not unanimously, 'that it is the opinion of this Committee, that it is not necessary that the oath contained in the Act 10 Geo. 4, c. 7, should be taken by Catholic voters at elections in Ireland.'"

The objections to the qualification of Mr. Blackney were then entered upon. The particular of qualification delivered in by him to the Clerk of the House, described the lands which were the subject of it by their names, situation, contents and annual value, but did not state the rental of any portion, nor the names of the tenants. The annual value of certain lands called Bally-cernuck, containing 328 acres, was stated in it to be 200 *l.*, and the aggregate value of all the lands to be 1,110 *l.* "over all head-rents, chief-rents, and reprises."

Two objections were raised by the counsel for the petitioners, the first of which, the failure to give in a rental with the names of the tenants, was not pressed, in consequence of the decision of the Speaker and the House in the *Dover case* (r), that a non-compliance with the Standing Order of 1717 would not necessarily vacate the seat.

The second ground of objection was insufficiency of value.

(r) Mirror of Parliament, 19th April 1833, p. 1841.

Proof was adduced, that the lands of Bally-cernuck were held under a lease for the lives of the sitting member and his two brothers, at a rent of 200 *l.*, payable to a Mr. Bagnall. Judgments were proved for securing in all the sum of 6,272 *l.* This sum comprised two legacies of 1,800 *l.* and 1,400 *l.*, bequeathed to the sisters of the sitting member by the will of the late Mr. Blackney, which, after giving other legacies, contained the following charge: "all which legacies I desire, and it is my will, to be raised and levied out of my real and personal estate," and then disposed of the real estate in favor of the sitting member. There were also four annuities amounting together to 478 *l.* (*s*).

Mr. Follett and Mr. Alexander, on the part of the petitioners, contended that the real question was, whether the lands yielded an income to the sitting member of sufficient amount to give him a qualification? Annuities were "reprises" within the statute 9 Ann, c. 5, ss. 1, 5, the provisions of which were made applicable to Ireland, by the fourth article of the Act of Union. The legacies were charged on the lands, and would carry interest; *Maxwell* v. *Wettenhall* (*t*); and the taking these judgments as collateral security for them, did not remove the lien from the land. The judgments having been entered up, although the judgment creditors could not proceed to a sale without having taken the step of extending the lands by elegit, would nevertheless be "incumbrances affecting the lands (*u*)," until satisfied or discharged. Unless then the sitting member could show that the annuities, judgments and legacies were satisfied, he had no sufficient qualification to entitle him to sit in Parliament.

(*s*) A fifth annuity for 211 *l.* 13 *s.* 4 *d.* was insisted on in the argument, but it was found by Mr. Jervis, a member of the Committee, to be charged on other lands not mentioned in the particular.

(*t*) 2 P. Wm. 25; *Carter* v. *Carter*, 1 Ves. sen. 169.

(*u*) 9 Ann. c. 5, s. 1.

Merewether, Serjt.

In the *Lincoln case* (*x*) it was held, and it was clear in law, that judgments by themselves did not affect the lands (*y*), and were not charges on them within the meaning of the 9th Ann, c. 5. It had therefore been found necessary to resort to the word "reprises" in that statute.—[The Chairman here appealed to Mr. Alexander, whether he pressed the judgments? Mr. Alexander answered, that he did not.]—The lands devised by the will were not mentioned in the particular given in by Mr. Blackney. There was no evidence to identify his lands with those left by the testator. There was nothing, therefore, to fix the lands with the legacies. Next with regard to the annuities. The counsel for the petitioners had produced memorials of annuities, the earliest of which was granted in the year 1794, and the latest in 1817, and had assumed that they were still subsisting, instead of establishing, as they were bound to do, that fact by evidence which would satisfy the Committee.

The Committee resolved, That the disqualification of Mr. Blackney had not been proved.

The counsel for the petitioners then abandoned their case.

The Committee resolved, that both the sitting members were duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious.

In the course of the case on the qualification, a lease was proposed to be produced, which was granted, of the

(*x*) *Ante*, p. 375. It was unnecessary expressly to decide the point.

(*y*) *i. e.* until docketed under the provisions of the Irish Acts, 7 Will. 3, c. 12, s. 10; and 8 Geo. 2, c. 7, ss. 2 & 3, (continued by several Acts, and made perpetual by the 13 & 14 Geo. 3, c. 42, s. 5;) which correspond with the English Acts 4 & 5 Will. & Mary, c. 20, s. 3; and 7 & 8 Will. & Mary, c. 36, s. 3. *Secus*, in the case of a purchaser with notice; *Davis* v. *Earl of Strathmore*, 16 Ves. 419.

lands of Bally-cernuck, in 1785, to the father of the sitting member. It was proved that there were no other lands called Bally-cernuck in the parishes of Lorum and Skyguff, where Mr. Blackney had in his particular stated the lands of that name to be situate, and that the rent had been paid to the lessor's son nine or ten years ago, by the steward of the sitting member.

A lease granted to the father of the sitting member, of lands named in the particular of his qualification, and for which he had paid rent, admitted in evidence.

Mr. Serjeant Merewether objected to the production of the lease, on the grounds, that its connection with the sitting member was not sufficiently shown, and insisted that the facts established were too vague to qualify the deed to be received as legal evidence.

Mr. Alexander submitted, that the Committee ought not to allow the strict rules of evidence in any case to stand in the way of proof, that a member was disqualified. Here the deed was 30 years old, and therefore proved itself.

The Committee decided that the lease should be received in evidence.

Memorials of annuities were also admitted, though it was contended, that to entitle a party to produce them he should first have given notice to the annuitant to produce his deed, which had not been done (*s*).

Memorials of annuities admitted in proof that annuities had been granted.

Copies of judgments, which had been examined with the originals by the witness reading the copy while the officer of the Court of King's Bench in Ireland read the original, were received in evidence (*a*).

Examined copies of judgments, the originals of which had been read by the officer of the court to the examinant, admitted.

(*s*) See, however, *Rowe* v. *Brenton*, 8 B. & C. 755, and 1 Phillipps on Evidence, 445, cited by the petitioners' counsel in the argument on this point; and *Doe* v. *Kilner*, 2 C. & P. 289.

(*a*) The above is the ordinary mode of comparing copies of Acts of Parliament, with the Parliament rolls, to be laid before the judges as evidence on private bills. See *Reid* v. *Margison*, 1 Campb. 469; *Gyles* v. *Hill*, ib. n.; *Rolf* v. *Dart*, 2 Taunt. 470.

CASE XXII.

TOWN AND PORT OF DOVER.

The Committee was appointed on the 21st of May 1833, and consisted of the following Gentlemen:

Lord Viscount Clive, M. P. for Ludlow, *(Chairman.)*

John Humphery, Esq. M. P. for Southwark.
Charles James Barnett, Esq. M. P. for Maidstone.
Sir John Owen, Bart., M. P. for Pembrokeshire.
Mark Philips, Esq. M. P. for Manchester.
George F. Young, Esq. M. P. for Tynemouth.
Francis Baring, Esq. M. P. for Thetford.
William Bolling, Esq. M. P. for Bolton.
Benjn. Handley, Esq. M. P. for Boston.
N. Lamont, Esq. M. P. for Wells.
John Baillie, Esq. M. P. for Fortrose, &c.

Petitioners:—Electors.
Sitting Members:—Sir John Rae Reid, Bart. and John Halcomb, Esq.
Counsel for the Petitioners:—Mr. Harrison and Mr. Serjt. Ludlow.
Agents:—Messrs. Vizard & Leman.
Counsel for Mr. Halcomb:—Mr. Follett and Mr. Cockburn.
Agents:—Messrs. Price & Bolton.

THE petition stated, that on the requisition of two electors, Mr. Halcomb took the qualification oath at the time of the election; that he therein described his qualification as an estate in lands, tenements and heredita-

ments, lying or being in the town of Warwick, in the county of Warwick, and in the parish of St. Pancras, London;" that the petitioners were informed, that Warwick is a large town, comprising two distinct parishes, and several streets, lanes and sub-divisions, and that the parish of St. Pancras is also a very extensive parish, *adjoining to* London, and comprising one of the most populous districts in its neighbourhood. It then alleged, that Mr. Halcomb had not taken the oath in accordance with the provisions of the statute, inasmuch as he had not correctly or truly stated "the parish, township or precinct," in which the lands, tenements and hereditaments, in respect of which he claimed to be qualified, are situate; and it contained allegations with respect to the vagueness of the description, and a search by the agents of the petitioners, and of the belief of the petitioners that the qualification was insufficient, similar to those in the *Bath case* (*a*), and that he ought not therefore to have been returned. It prayed that the election might be declared void.

The certified oath which was taken by Mr. Halcomb, on the day after the first demand made, was produced, and in it the property, in respect of which he made out his qualification, was described to be situate as stated in the petition. It was proved, that inquiries had been made during the week previous to that in which the Committee sat, both at Warwick and in St. Pancras, and that ineffectual searches had been made in the poor-rate and land-tax books of both those places, for the purpose of ascertaining if there were any property there belonging to the sitting member. In St. Pancras, his name was found in the rate in January 1832, as an occupier, but in the subsequent rate it was not there. The statement delivered in to the House was also put in, in which the subjects of his qualification were described

A sitting member, who had not delivered in a particular of his qualification to the Clerk of the House, in compliance with the Standing Order of 1717, but had furnished to the petitioners a statement of the qualification on which he meant to rely, (differ-

(*a*) *Ante*, pp. 22, 23.

ing from that sworn to by him at the election,) within a week previous to the sitting of the Committee, and which the petitioners did not enter into evidence to disprove; held to be duly elected.

Semble, that in such a case a Committee would allow an adjournment, to enable the petitioners to make the necessary inquiries.

to be situate in St. Mary's in Warwick, the parish of St. Pancras London, St. Mary's in Dover, and in the parishes of Ashley, Charlton, Hougham, Sellinge, Smeath, Sturry and Margate, all in the county of Kent. On the 15th of May a statement was sent by the sitting member to the petitioners, in which he described his qualification to consist of a rent-charge of 204 *l.* for his own life, granted by John Reynolds, of Dover, gentleman, and charged upon messuages or tenements, and parcels of land, situate in the parishes of Ashley, Charlton, Hougham, St. Mary-le-Virgin in Dover, Sellinge and Smeath, all in the county of Kent; and of a rent-charge of 115 *l.* also granted for his own life, by Wm. Knocker, Esq. of Dover, and charged upon lands called Joiners, situate at Sturry, and upon a messuage in Margate, both in the said county of Kent. A letter from Mr. Halcomb's agents, to the agents of the petitioners, was admitted, which informed the latter that Mr. Halcomb did not intend to insist on the qualification at Warwick and in St. Pancras.

Mr. Harrison and Mr. Serjt. Ludlow, for the petitioners:

The circumstances of this case were rather unusual. The sitting member had sworn to a qualification, different from that delivered in at the table of the House, and totally different also from that contained in the statement sent by him, so late as the 15th of May, to the petitioners, who had been deprived of the early information to which they were entitled, and which would have enabled them to make the necessary inquiries as to his qualification, by the neglect on his part to deliver in a particular, as required by the standing orders(*b*). The general description of his qualification, given by the sitting member at the poll, had afforded very

(*b*) These were read to the Committee. See *ante*, p. 25.

scanty materials for inquiring into the validity of it. The inquiries at Warwick and St. Pancras had afforded no trace, that any such person possessed property there.

It was indispensable that a sitting member should have possessed a sufficient qualification at the poll. This was established, among other cases, by that of Mr. Adey, whose petition against the return for Penryn (*c*) in 1827, was rejected, because he had refused to take the qualification oath at the election. If the qualification stated at the poll were not a good one, it must be regarded as nugatory, and then the *Penryn case* had decided that the party could not be a candidate. In the *Leominster case* (*d*), Sir Wm. Fairlie had for this reason been withdrawn as a candidate, and had been again brought forward with another qualification. The oath taken by Mr. Halcomb did not apply to the qualification on which he now rested his case; he must therefore be considered as constructively refusing to take the oath. There was no ground for urging surprise, inadvertence, or want of due preparation, as the reason for the qualification stated at the poll, for notice had been given on the first day, and the oath was not taken until the second. In the oath, too, there was a fatal defect in point of form. The town of Warwick contained two parishes, and yet the parish had not been specified in which the property was situate, though it was expressly required by the 5th section of the 9th Ann, c. 5, to be stated. By the subsequent abandonment of this qualification, the sitting member had been brought within the provisions of the statute, for the specification was an integral part of the oath, and that being imperfect, the oath must also have been so, and therefore Mr. Halcomb was not entitled to his seat.

(*c*) Minutes, 28 Feb. 1827. (*d*) Corb. & Dan. 1.

The next ground of objection was, the non-compliance with the standing order. On this point an authority was afforded by the *Colchester case* (*e*), where the allegation was, "that the said Christopher Potter was not capable of being elected or returned." The objection in that case was rested on the statute of Ann, and on the fact that the sitting member had made no return of his qualification, in compliance with the standing order (*f*). The first ground taken there was, that there was no sufficient allegation in the petition; all the arguments showing the distinction between a standing order and an Act of Parliament were then very ably urged, but the Committee ultimately decided, that Mr. Potter's election was void. There was no difference between that case and the one before the Committee, except in the fact, that the sitting member had, in the latter case, sent privately to the petitioners a statement of a qualification, the subjects of which were so dispersed over the whole county of Kent, as to render it impossible for them to make the necessary inquiries in the time allowed them. It would perhaps be said, as was urged in the case last cited, that a standing order was not an Act of Parliament, and that, although a breach of a standing order may have been committed, still the sitting member was entitled to his seat; but in support of that line of argument, it would be necessary to contend, that the House had no authority in these cases, but what had been given to it by Act of Parliament. Long, however, before the passing of any Act to regulate the proceedings of the House, questions of election had been disposed of by it. As early as the reign of Elizabeth, a member had been unseated for bribery in purchasing his seat. *Thomas Longe's* case (*g*). The third point on which the petitioners insisted was, that

(*e*) 1 Lud. 415.
(*f*) Ibid. 425.
(*g*) Cited 2 Peck. 246.

under the circumstances of the case, it was incumbent on the sitting member to prove his qualification (*h*).

Mr. Follett, for the sitting member:

The petitioners were bound to make out a clear case of disqualification, and had no right to call for affirmative proof from a sitting member. This had been the course pursued in all the cases which had occurred during the session, and the rule was a just one; for otherwise sitting members objected to on this ground would be obliged to produce their title-deeds, and have them made the subject of discussion and examination in a committee-room, by some able conveyancer brought in for the purpose of discovering some technical defect, and the estates held by these deeds might, as had happened in other cases, be thereby lost to their owners (*i*).

(*h*) In the course of the arguments, which have been combined for the sake of brevity, Mr. Serjeant Ludlow requested permission of the Committee to be allowed to prove the disqualification of Mr. Halcomb, in the event of the Committee deciding that the *onus* lay on the petitioners. To this course Mr. Follett objected, and cited the *Lincoln case*, *ante*, p. 378, where a similar application to divide the case had been refused. The Committee determined, after argument and considerable deliberation, that the counsel for the petitioners should proceed with their case. In some instances the *onus probandi* has, in cases of scrutiny, contrary to the general rule, been thrown on a sitting member, where his voters had been admitted to poll on their own declaration, that they were entitled and had voted before, (*Cardigan*, 3 Dougl. 186); or had been admitted freemen, with a large number of others, in one night, the poll having been much protracted, (*Coventry*, cited 2 Lud. 342); or where they had refused at the poll, to give an account of the title under which they claimed a right of voting, (*Cricklade*, 2 Luders, 350). These cases would seem to furnish, by analogy, an argument in favor of imposing the *onus* on a member, who has failed to comply with the standing order.

(*i*) See the observations of Lord Eldon in *Cock* v. *St. Bartholomew's Hospital, Chatham*, 8 Ves. jun. 141. The case of *Reid* v. *Shergold*, 10 Ves. 369, was litigated in consequence of information, given by an attorney's clerk to the heir at law and residuary devisee of the testator, of Mr. Serjt. Hill's opinion against the title. The estate was recovered against a purchaser. Much anxiety to prevent similar occurrences has been evinced by our courts. In *Cholmondeley* v. *Clinton*, 19 Ves. 273, it was held, that

The counsel on the other side were seeking here, what was ineffectually sought in the cases of *Lincoln* and *Coventry* (*j*), to throw the onus on the sitting member. In the case of *Carlow* (*k*) the standing orders had not been complied with: there no rental had been stated in the particular; still the petitioners were compelled to prove their case. The ground of disqualification here was, that Mr. Halcomb had not complied with the standing orders. It would therefore be essentially necessary to consider the distinction between an order of the House, and a statutable enactment. But first, it had been assumed that the sitting member had no qualification, because he had stated one at the hustings, and given in another at the table of the House. This he had, both under the Act and the standing orders, a perfect right to do: and it was incumbent on the other side to show that he had not a sufficient estate, for the words in the standing order did not require the member to continue in possession of the same property (*l*). There was nothing to prevent his selling the estate and substituting another.

The facts of the case were these. Mr. Halcomb was elected in March, and took his seat on the 20th of that month, and then delivered in a statement of his qualification at the table of the House on taking the oaths; that statement included property in St. Pancras, St. Mary's Warwick, and in several parishes in Kent. On the same evening the petition against his return was presented. The particular required by the standing order not having been delivered in by Mr. Halcomb, partly by reason of misapprehension, but principally on

a dissolution of partnership between solicitors does not enable the retiring partner to act against a client of the firm without his consent.

(*j*) *Ante*, pp. 350, 386. (*k*) *Ante*, p. 398.

(*l*) In the *Shaftesbury case*, 30th April 1715, 18 Journ. 69, the objections of the sitting member to the qualification stated by the petitioner, were directed by the House, on a division of 136 to 126, to be confined to the qualification sworn to at the poll.

account of unavoidable absence from town, in consequence of the illness of a near connection, on his return to town he applied to the House for leave to do so; this application was, however, refused.

Mr. Follett then quoted from the Mirror of Parliament(*m*) the speeches of Mr. George Lamb, Mr. Charles Wynn, and the Speaker, in the debate which took place on Mr. Halcomb's motion, which were to this effect, that in their opinion the breach of the standing order was a question for the House and not for the Committee, who, sitting under an Act of Parliament, would not be bound by it, and therefore that it was for the consideration of the House, whether the petitioners would not sustain prejudice by a refusal to accede to the motion, as they would not have had the facilities afforded them, which the standing orders were intended to give of investigating the sufficiency of Mr. Halcomb's qualification, and might be driven to apply for relief to the Committee, who would thus be placed in a somewhat difficult situation. The effect of the division which took place(*n*) was, that Mr. Halcomb was not able to do what he had desired to do.

According then to the opinion of the House, and the highest possible authority, that of the Speaker, it would be for the Committee to deal as they should think fit, with any application for an adjournment. Since that time the petitioners had not applied either to the House or to the sitting member for information, but they had received from Mr. Halcomb, *ex gratiâ*, on the 15th of May, a statement of his qualification. Having therefore determined to risk their case

(*m*) Mirror of Parliament for 19th April 1833, pp. 1341, 1342. See note (B) at the end of this case. These quotations being objected to by Mr. Serjt. Ludlow, the Chairman expressed his opinion that Mr. Follett might read them as part of his speech.

(*n*) The division on the motion was as follows: Ayes 36 Noes 52; majority against the motion 16.

without any application for time to make inquiry, which, under the circumstances, would probably have been granted to them, the petitioners must suffer in consequence of their own default. They had sent down to Warwick some time after the qualification had been stated to them to be in Kent, and, though they had been informed that Mr. Knocker was the grantor of one of the rent-charges, their counsel had not ventured to ask him, when in the witness box (*o*), whether or not this were correct? If then an adjournment were now asked for, he should submit that the petitioners were not entitled to any indulgence, for they had received a week before ample information to enable them to investigate the sufficiency of the qualification; the names of the grantors of the rent-charges, and the names of the attesting witnesses, had been furnished to them; and in fact the qualification delivered in at the table of the House on the 20th of March, was the same as that mentioned in the statement sent to the petitioners.

With respect to the formal objection which had been taken to the oath, it would hardly be seriously insisted upon, that a member was to lose his seat because he had said "town" instead of "parish." The oath also was to be "in the form or to the effect following," and therefore it was only requisite to point out in it generally where the property was situate.

A case in Luders had been cited, which had in effect decided, that a resolution of the House was equivalent to an Act of Parliament, and that a non-compliance with it was the same as a non-compliance with an Act of Parliament. How far was this consistent with later authorities? By one of the standing orders of 1717 it was provided, "that if any sitting member shall think fit to question the qualification of a petitioner, he shall,

(*o*) Mr. Knocker was Mayor of Dover, and had been examined as to the circumstances under which the qualification oath was taken.

within 15 days after the petition read, leave notice thereof in writing with the Clerk of the House of Commons; and the petitioner shall in such case, within 15 days after such notice, leave with the said Clerk of the House the like account in writing of his qualification as is required from a sitting member." Suppose then a petitioner had not complied with the standing order, would it be contended that he would not be qualified to sit? In the *Great Grimsby case* in 1808 (*p*), the petitioner had not delivered in a particular, but the House decided that he was entitled to petition, and he eventually obtained the seat. That case was in accordance with the opinion of the Speaker and other honorable Members, which had before been referred to. If, however, the argument on the other side were to prevail, what would be the effect of enforcing it? Why, that notwithstanding parties should have assembled to elect a member, and should have returned him as their representative, then, though no ground of complaint existed against him, though, as in this case, no one ventured to claim the seat, the Committee was to be asked, because he had acted against a standing order, to vacate that seat. This was a step which he submitted, upon constitutional grounds, the House had no right to take. A standing order, such as this, could not be enforced against the undoubted rights of the electors. The sole question then for the Committee to decide was, whether Mr. Halcomb was duly elected? That question resolved itself into another, aye or no, was he qualified? and he trusted that the Committee would determine, that the petitioners had not made out, as they were bound to do, a case of disqualification.

Mr. Harrison:

In the case of *Carlow*, which had been cited, an opportunity for inquiry had been afforded to the peti-

(*p*) See note (A) *post*.

tioners; for, although the member did not state the rental, nor the names of the tenants, he stated, to the amount of 1,100 *l.*, what the property was, and also where it was; and there, as well as in the case of *Lincoln*, the particular was delivered within 15 days.

The Committee resolved, that John Halcomb, Esq. was duly elected, and that neither the petition nor the opposition to it appeared to be frivolous or vexatious.

(A) On Mr. Horner's motion in 1808 to discharge the order for considering Mr. Lofft's petition, complaining of an undue election for the borough of Great Grimsby, on the ground that the petitioner had not complied with the standing order, by delivering in a statement of his qualification within 15 days after notice, the Solicitor General (Sir Thomas Plumer) agreed, that this course was in accordance with the practice of the House antecedent to the passing of the Grenville Act, "but he contended that, since the enactment of that statute, which transferred all jurisdiction on matters of controverted elections from the House to the Committees chosen under it, it was not competent to the House to discharge any order for a Committee to determine the merits of an election, in any other manner than as prescribed by the Act. The whole jurisdiction rested with the Committee, which alone was to decide upon the question respecting the qualification, and therefore the House could not have the power to discharge the order pursuant to the motion of the honorable gentleman." The motion was negatived. Hansard Parl. Deb. vol. x. p. 698. When the question came before the Committee, the point does not appear to have been raised by the counsel for the sitting member. See Minutes, 24th Feb. 1808, and the note to the *Coleraine case, post.* p. . The order for considering the petition of a candidate who had failed to deliver in his qualification was discharged in the cases of *Honiton* (1715); *Leominster* (1717); *Shaftesbury* (1722-23); *Steyning* (1724-5); *Minehead* (1727-8), and *Westbury* (1734-5), cited in 1 Lud. 427. In the case of *Liverpool*, 22 Journ. 426, the House enforced against a candidate, in whose behalf electors had petitioned, the explanatory order of the 6th February 1734-5, which is in these words: "Resolved, That on the petition of any elector or electors, for any county, city or place, sending members to Parliament, complaining of an undue election and return, and alleging that some other person was duly elected, and ought to have been returned, the sitting member so complained of may demand and examine into the qualification of such person so alleged to be duly elected, in the same manner as if such person had himself petitioned."

(B) The following are the Speeches referred to in Mr. Follett's argument, *ante*, p. 419.

Mr. George Lamb:—"In refusing the time which the sitting member asks for, we should be doing him great benefit, and the petitioners great injury. The standing order is a rule, which the House has power to enforce or not upon its own members; and supposing the honorable and learned member for Dover does not deliver in the particulars of his estate, he will not thereby lose his seat. In fact, it has been almost a blunder of the sitting member to take the course he has done, for if we refuse him the time he asks, or if he had not asked it, the only result would be (if the petitioners did not apply to this House) that the Committee would have to decide upon the important point of his qualification, without the particulars concerning it having been examined by the parties interested."

Mr. Charles Wynn:—"I entertain, at the same time, fears of not doing justice to the sitting member and to the petitioners. It must be remembered that the question rests upon a standing order of the House, and that a standing order of the House cannot bind a Committee appointed under an Act of Parliament. Therefore it is that in different bills I have brought in, I have constantly endeavoured to make the orders of the House matters of special enactment. What will be the consequence of our refusing this application? Why, that the petitioners will have to go before the Committee, without having had the advantage of inspecting the particulars of the estate of the sitting member;" then, after alluding to the delay which had taken place in making the application, he proceeds; "I am not, therefore, inclined to grant this indulgence to the sitting member; but seeing that the Committee will examine into his qualification, without regard to his having complied with the standing orders of this House, I am inclined to allow this indulgence for the sake of the petitioners, who will otherwise be placed in a situation of disadvantage. It is altogether a difficult question, but it cannot be conceded, that the non-compliance with the standing order will deprive the member of his seat, to which he has been legally elected, and to which he is by law entitled, supposing that he makes out his qualification. If I were a member of the Committee, I know that I should at once enter into the determination of that question under the Act of Parliament, without regard to the standing order. As this would place the petitioners in a situation of disadvantage, I feel disposed to accede to the proposition."

The Speaker:—"Having been called upon to deliver my opinion upon the point in discussion, I should say, that the non-compliance with the standing order by the sitting member, is a question between him and the House. A petition having been presented complaining of his return, upon the ground of his not being qualified, the Act of Parliament has provided, how that petition shall be inquired into, and the case dealt with. Whatever may be the decision of the House to night, that petition must go before the Committee. The Committee having been duly balloted for, will be sworn to try the merits of the petition, and will form its judgment upon the result of that investigation. The question it will have to decide will be, qualification or no qualification, at the time the sitting member was returned? Whatever may

be the result of that decision, it appears to me it will not be governed by the sitting member's compliance or non-compliance with the standing orders, not referred to by the Act of Parliament under which the Committee is appointed. If the petitioners on that inquiry shall feel that they are prejudiced by the sitting member's non-compliance with the standing orders, shall feel that they have not had the facilities afforded them which the standing orders intended should be granted them, and should call upon the Committee for relief, it will certainly be a most difficult point for the Committee to decide, how they shall act in the obscurity in which they will be involved; but still it will be a question for it to decide. The whole question, therefore, appears to me to turn upon this, whether, as the petition must go before the Committee, granting the permission now asked will prejudice or benefit the petitioners before the Committee?"

There have been several questions before the House, during the present session, on the subject of its standing orders on matters of election. In the *Carmarthen case* (Mirror of Parliament, March 4th, p. 542), the petition in which was subsequently abandoned, John Williams, Esq., one of the intended sureties, who was to have entered into recognizances on the day following his application to the House, had received a subpœna to attend a trial at the Carmarthen assizes, where the petition stated his evidence to be material, and the House enlarged the time for entering into the recognizances from the 5th to the 18th of March. In the case of *Mallow* (Mirror of Parliament, March 6th, p. 587), where the recognizances, which had been executed and transmitted in due time under cover to the Speaker, but had miscarried, further time for completing the recognizances was allowed. In the *Mary-le-bone* petition (Mirror of Parliament, April 15, p.124), it was stated, that on the last day for entering into the recognizances, the sureties had been appointed by the agent to meet him in the lobby; one attended in the lobby, the other was in one of the offices of the House, but the agent not being personally acquainted with either of them, the office hour passed over before the discovery was made, that they were in attendance. Sir Robert Inglis moved, "that the petitioners be called in to verify the facts stated in their petition," with the view of founding on their evidence an application for an extension of time. The House divided, Ayes 22; Noes 62; majority against the motion 40. In the *Rye case*, 85 Journ. 229, there were two petitions, one from electors, and the other from Colonel Evans, a candidate. The agent, being unaware that recognizances would be necessary upon both petitions, had provided sureties only on that of Colonel Evans. When the error was discovered, there being no time to communicate with the electors, the agent, under the authority of his principal, gave in the names of the same sureties for both petitions. One of the sureties objected to this at the examiner's-office. These facts were stated by the agent in a petition presented three days before the time for entering into the recognizances had expired, and on the day after the objection had been made, and were verified on oath. The House enlarged the time, and allowed another surety to be substituted.

CASE XXIII.

BOROUGH OF CLONMELL.

The Committee was appointed on the 16th of May 1833, and consisted of the following Gentlemen:

Sir B. W. Guise, Bart. M. P. for East Gloucestershire, *(Chairman.)*

Sir Samuel Whalley, M. P. for Mary-le-bone.
Martin Joseph Blake, Esq. M. P. for Galway Town.
John Horatio Lloyd, Esq. M. P. for Stockport.
J. R. Todd, Esq. M. P. for Honiton.
Philip Henry Howard, Esq. M. P. for Carlisle.
Edward Romilly, Esq. M. P. for Ludlow.
Daniel Whittle Harvey, Esq. M. P. for Colchester.
A. Leith Hay, Esq. M. P. for Elgin.
Joshua Samuel Crompton, Esq. M. P. for Ripon.
J. H. Talbot, Esq. M. P. for New Ross.

Petitioners:—Electors.

Sitting Member:—Dominick Ronayne, Esq.

Counsel for the Petitioners:—Mr. Harrison, Mr. Follett, and Mr. Austin.

Agent:—Mr. Baker.

Counsel for the Sitting Member:—The Hon. C. E. Law, and Mr. John Smiley.

Agent:—Mr. Power.

THE petition raised a case of scrutiny into the votes for the sitting member, on the ground of insufficiency of value, the barrister having, notwithstanding objections

made in each case, admitted persons on the register who would swear that their property was worth "to them" 10 *l.* a year. It contained other allegations, which were not proceeded upon.

Poll-books kept by the returning-officer, beyond the 21 days mentioned in the 1 Geo. 4, c. 11, s. 3, and then delivered to the clerk of the peace, who was not the officer entrusted by the Act with the custody of them, are admissible.

The poll-books had been kept open on the table of the mayor's private office, which was locked at night, until the 2d of January, on which day the mayor made the affidavit required by the 1 Geo. 4, c. 11, sect. 3, preparatory to delivering the books to the clerk of the peace, to whom he had been informed by the assessor he ought to deliver them, and who was on that day expected in Clonmell. He did not, however, come on that day, and the books were delivered in a parcel, sealed up, to the deputy clerk of the peace, on the 5th of January, which was after the expiration of the 21 days mentioned in the statute. The delay which had thus taken place, and the non-delivery of the books to the town-clerk, the proper officer, were made grounds of objection to the reception of the poll. The clerk of the peace, and his deputy, however, having proved, that the books were in the same state as when delivered to them, they were admitted to have been sufficiently authenticated.

The candidates at the election were, John Bagwell, Esq., and the sitting member. At the close of the poll the numbers were, for

Mr. Ronayne - 262
Mr. Bagwell - 212.

Michael Darcy's case.

The only vote presented for discussion, out of a class of 70 or 80 persons, was that of Michael Darcy, an occupant of a cellar, the objections to whom were, that he was not an occupier of a house of sufficient value, and that he was not assessed. In the register, and in the voter's affidavit, he was described as occupier of "a house, No. 4, Dublin-street, Clonmell."

Committees have the power to

Mr. Law objected, that it was not competent for the Committee to question the correctness of the register.

The object of the Irish Reform Act, in not giving to any objector the power of appealing to the judges from the barrister's decision, was evidently to favor the new constituency, by making that decision conclusive in the cases of admitted votes, and to protect persons in humble life from the expense attendant on such an appeal; and therefore, *à fortiori*, an appeal to a Committee must be held to have been excluded. On a question of law, it might perhaps be proper to allow an appeal, but questions of value would, in all cases, be most properly determined on the spot. The 59th section of the Act was introduced for the purpose of preventing a person from voting, when he had, by his own conduct, forfeited his right to do so. Notwithstanding the decisions which had already taken place, in the *Longford*, *Galway* and other cases, if a dissolution of Parliament were to occur, the register impugned by them would still be acted upon, for the Irish Act gave no power to correct the register.

inquire into the list of voters admitted by the barrister, which have been *bonâ fide* challenged before him.

Mr. Harrison was heard in answer to the objection (*a*), and Mr. Law in reply.

The Committee then came to the following resolutions: "That the Committee deem they have power and jurisdiction to inquire into the lists of the electors admitted by the registering barrister." "That they will receive evidence to expunge votes, in cases only where the right was *bonâ fide* challenged before the registering barrister."

May 20th. The objection at the registry must be taken in the manner prescribed by the 18th section.

The Committee on this day resolved, "That the Committee will consider those votes only to have been *bonâ fide* challenged, in which the objection shall be directly proved to have been taken in the manner prescribed by the 18th section of the Irish Reform Act."

(*a*) Mr. Harrison's argument was similar to that urged by him in the *Oxford* and *Longford* cases, *ante*, pp. 76, 184.

Mr. Wm. Smith, a merchant in Clonmell, was then examined. He stated, that he had been employed some years before to make a valuation of the houses in the town; that he had given instructions to Mr. Welsh, a barrister, to act at the registry on his own behalf, as well as on the part of Mr. Bagwell, but had not paid him, expecting that he would be paid by Mr. Bagwell; that no objection had been made to Mr. Welsh's right to challenge the votes; that written instructions had been given to him to object to all persons whose "places" were thought not to be worth 10 *l.* a year; in particular to oppose every occupant of a cellar (as Michael Darcy was) except one, a man of the name of O'Neill; that when Darcy's name was called, he said to Mr. Welsh "this is one of the cellar-men;" that there were two objections raised as to Darcy before the barrister: 1st, that he occupied only part of a house; 2d, that his occupation was not of the annual value of 10 *l.* That the voter himself stated, in his cross-examination, that he held a cellar, and that it was worth 10 *l.* a year *to him* for his business; he was a boatman, and his wife sold meat there. The witness further stated, that he was a voter, and of the party opposed to Mr. Ronayne, and also a member of Mr. Bagwell's committee, but not at the time of instructing Mr. Welsh, Mr. Bagwell (who was not a voter) not having then declared himself a candidate, though it was universally believed he would eventually do so.

Mr. Follett submitted, that the objections were now proved to be sufficiently authorized.

Mr. Law insisted, that general instructions given to counsel were not a sufficient compliance with the Act of Parliament. "Duly authorize," meant the giving a retainer, which Mr. Smith had not done; Mr. Welsh, therefore, was not the counsel of Mr. Smith, who only as a friend of Mr. Bagwell, and as a valuer of houses,

gave information to Mr. Welsh as to who should be opposed. The objection under the Irish Act ought to be most formal, because previous notice was not required to be given to the voter.

The Committee resolved, "That it appears to the Committee that the objection to the vote of Michael Darcy was duly authorized."

Mr. Follett then called a witness, George Graham, who stated that he was neither examined, nor tendered for examination, before the registering barrister.

Evidence not before the barrister, decided to be not admissible, unless the party was precluded from giving it by the decision or conduct of the barrister.

Mr. Law objected, that the Committee could not receive any evidence, which had not been given or tendered before the barrister, to invalidate any vote which had been admitted upon the register.

Mr. Follett:

The objections arose, and were discussed and decided, upon the voter's own statement. According to the practice of Committees, the voter could not be called as a witness (*b*); in order, therefore, to prove the facts, it was necessary to call other witnesses, to prove what he had stated. There was, besides, nothing in the Irish Reform Act constituting a Committee a mere court of appeal. It was of the highest possible moment, that the decisions of Committees should be uniform. Committees had decided that, under the English Act, it was only necessary to show that the vote had been heard by the barrister (*c*), and yet there it was expressly pro-

(*b*) See, however, *è con. New Sarum, ante* p. 253, and the cases cited in note (*t*) there; also the cases of *Milborne Port*, 1 Dougl. 135, 2d *Cricklade*, 4 Dougl. 76, and *Bedfordshire*, 1 Lud. 392. Where the question has been the right of voting, and a witness is tendered whose right to vote is undisputed, (*Dorchester*, 1 Dongl. 360; and note (*d*), ibid. 363; 2d *Carlisle*, 3 Lud. 571.); or where, if the right were established, the witness would be disqualified by the receipt of alms, (*Poole*, 2 Dougl. 273), the testimony has been admitted.

(*c*) *Ripon, ante*, p. 205, George Snowden's case, *Carnarron, post*, p. 457.

vided, that the decision should be shown to be erroneous. If the voter had been rejected by the barrister, and had appealed to the judge of assize and a jury, he would never have been confined to his own testimony. Was it ever contended, on an appeal from a magistrate to the sessions, that the evidence before the magistrate was all that could be admitted? The voter here had been objected to at the poll, and therefore the other side had full notice of the objections. The Committee were sworn to try the merits of the petition, one of which was, that the class to which the voter belonged was not entitled to vote; and it had been intimated, as the effect of the first resolution, that the Committee were of opinion they possessed the same power as before the Reform Act, with respect to admitted votes: he doubted, therefore, how far, sitting as they did under the provisions of the same Act of Parliament, and for the same purpose as before, it was competent for them to exercise any discretion as to the extent of their inquiries.

Mr. Law:

It did not at all follow, that because Committees had the power to examine into the decisions of the barrister, they were not to exercise a discretion, and to limit their inquiries by the exclusion of those cases, which could be better examined into in the court below. On an application for a new trial, judges might and did inquire, are you now seeking to bring forward witnesses who might have been produced on the first trial? If the Committee should decide, that they would hear objections, though due diligence had not been used to object before the barrister, that decision would place the representation of Ireland under the control of the longest purse. The voter had no notice to appear before the Committee; for the objection at the poll was well known to be a mere nullity.

The Committee resolved, "That the Committee will only receive such evidence as was taken or rejected by the registering barrister, unless it be shown that the party was precluded from giving further evidence by the decision or conduct of the barrister."

Four witnesses were then examined, two of whom had been valuators in the year 1828, appointed by the commissioners under an Act of Parliament for lighting and paving the town of Clonmell, and who stated before the Committee, as they had done before the barrister, the principle of rating houses adopted by them to have been, to assess the houses at the improved rent, but not to rate any person, the improved rent of whose house did not amount to 5 *l.*; and that the general opinion in the town of that valuation was, that it was above the clear yearly value of the houses assessed, and that the assessment had been appealed from in some instances. The effect of the evidence given by these witnesses was, that they had been examined in some three or four cases, in which they had not inspected the individual houses, rooms or cellars, the right to registry in respect of which was in contest, though they knew the value generally of the houses in the same street or lane, and had, in one instance, inspected the adjoining house; that in this last case the house was valued at 6 *l.* in the commissioners' books, and in the others the house was either not valued at all, or the assessment of the whole building, of which the room or cellar formed a part, was 5 *l.* only; that the claimants admitted, on their examination, that the rents paid by them were in one instance 1 *s.* 2 *d.*, in another 1 *s.* 6 *d.* a week, and in a third 8 *l.* Irish, but they swore that their occupations were worth "to them" 10 *l.* a year, by reason of the trade carried on there, by the sale of eggs, rearing pheasants, &c. &c.; that the barrister having decided, that as the words respecting what a solvent tenant

would give for the premises, contained in the oath in the 4th schedule to the 10 Geo. 4, c. 8, were not in that contained in the Schedule C, No. 7, to the Irish Reform Act, he was bound to receive the oath of the voter thus qualified, unless contradicted by other testimony (which he expressed his readiness to hear) as the true criterion of the value, the witnesses were indisposed to offer evidence in other cases, and were not afterwards called. A list of 38 cases was produced by one of the valuators, in all of which he was prepared to give evidence, and two other witnesses stated, that they were also prepared to do so in 12 and 20 cases respectively. The above-mentioned cases occurred on the 2d day of the registry, which lasted eight or ten days: the early part of the first day was occupied in disposing of the cases of the better class of inhabitants.

The Committee, upon this evidence, resolved, after argument, "That it had not been shown that any party was precluded from giving futher evidence by the decision or conduct of the barrister."

May 22d. An adjournment to admit of the arrival of a material witness allowed, on the terms of the party requiring it paying the costs of the day.

Mr. Harrison then applied for and obtained, on the terms of paying the costs of the day, an adjournment until one o'clock on the following day, by which time it was expected that Mr. Welsh, the barrister, would arrive, whose evidence, though material, would not, from motives of delicacy, have been called for, but for the decision of the Committee on the Saturday previous. In support of his application he cited the cases of *Oxford, Galway* 1827, *Dublin* 1826, *Westmeath* and *Londonderry* (*d*).

May 23d. Mr. Welsh's evidence was much to the same effect as that given above. He stated, in addition, that when a claimant swore he paid 8 *l.* rent, he did not oppose his

(*d*) See *ante* p. 241, notes (*e*), (*f*), (*g*).

registry; that about 14 claimants were rejected by the barrister upon his (Mr. Welsh's) cross-examination, "he having sifted their consciences thoroughly;" that nearly 300 claimants, in consequence, abstained from offering themselves at the table for examination (*e*); that many others had been rejected for defects in their notices; that except in the cases of three butchers, whose very appearance to claim registration for their stalls excited a strong murmur of disapprobation among the persons assembled, and against whose claims he had called Mr. Douglas, the agent to Mr. Bagwell, upon whose evidence they had been rejected, he had, after the barrister's decision that the voter's oath was the best criterion of value, discontinued calling witnesses, and had confined himself to the cross-examination of the persons objected to; that he had not requested the barrister to make a minute of his judgment, because his impression was, that in the end Mr. Ronayne would withdraw, and that there would, therefore, be no contest; he said that instances occurred, in which the claimants, who refused to swear in the words of the affidavit of registry, "that the premises were *bonâ fide* of the clear yearly value of not less than 10 *l.*" signed the affidavit without hesitation.

Upon this evidence the question of the right to call witnesses as to Michael Darcy's vote was again argued (*f*). The Committee resolved, "That it does not appear that any party was precluded from giving evidence by the decision or conduct of the barrister; but the Committee will receive evidence, as stated in their former resolution."

(*e*) There were in all about 1,000 claimants, of whose claims some were duplicates, and about 510 were registered.

(*f*) As it is not probable that the two last decisions of this Committee will form precedents for any future one, it has not been thought advisable to report the arguments, and the evidence has been much compressed.

The counsel for the petitioners then abandoned the case.

The Committee resolved, "That the sitting member was duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious."

CASE XXIV.

BOROUGH OF CARNARVON.

The Committee was appointed on the 16th of May 1833, and consisted of the following Gentlemen:

Lord Viscount Eastnor, M. P. for Reigate, (*Chairman.*)

William Peter, Esq. M. P. for Bodmin.	C. O'Brien, Esq. M. P. for Clare County.
Richard Price, Esq. M. P. for Radnor.	R. M. O'Ferrall, Esq. M. P. for Kildare County.
William Ewart, Esq. M. P. for Liverpool.	G. Ferguson, Esq. M. P. for Banffshire.
The Hon. J. C. Dundas, M.P. for Richmond.	Hon. D. G. Haliburton, M.P. for Forfarshire.
C. Baring Wall, Esq. M. P. for Guildford.	Sir Francis Vincent, Bart., M. P. for St. Alban's.

Petitioners:—Electors.

Sitting Member:—Owen Jones Ellis Nanney, Esq.

Counsel for the Petitioners:—Mr. Harrison, Mr. Serjeant Merewether and Mr. Wm. Russell.

Agents:—Messrs. Lowe.

Counsel for the Sitting Member:—Mr. Pollock & Mr. Follett.

Agents:—Messrs. Hall & Dyson.

THE petition was by persons who described themselves as electors at the last election for the borough of Carnarvon, and claiming to have had a right to vote, and having voted, or having tendered their votes, at the

last election; it stated that Major Nanney and Rear-Admiral the Hon. Sir Charles Paget were the candidates at the election, on the 18th of Dec. 1832; that the real ancient and reserved right of voting for the several and respective towns and places of Carnarvon, Pwllheli, Nevin, Conway and Cricceith, was, by the law of Parliament, in the inhabitants of the said several and respective towns and places, paying scot and lot; it then stated, in the usual form, that the register was incorrect, and that by means of numerous persons who had claimed to be registered, and had procured themselves to be put on the register, but who were non-residents, and not paying scot and lot within the said several towns and places, or any of them, and were not entitled to be registered, Major Nanney had obtained a colorable majority of registered votes, whereas had the register been correct, Sir C. Paget would have obtained the real majority of votes at such election, and have been entitled to have been returned; it then stated the proceedings on the former petition, and that leave had been obtained to question the return of Major Nanney; and after charging treating and bribery, (which charges were not persisted in,) it prayed that Sir C. Paget might be declared duly elected, and Major Nanney not duly elected; and that the amended return might be further amended by directing the name of Major Nanney to be erased therefrom, and that of Sir C. Paget inserted in its stead; and that the register of voters might be corrected accordingly, or that the election might be declared void, and Major Nanney disabled and incapacitated from sitting for the borough.

Statements of rights of voting.

The parties in this case put in statements of the right of voting. That put in on the part of the petitioners was in these terms: "That the ancient and reserved right of voting in the election of a member to serve in Parliament for the town and borough of Carnarvon, in the county of Carnarvon, not including Ban-

gor (*a*), but so far as relates to the town and borough of Carnarvon aforesaid, and to the several towns, boroughs or places of Pwllheli, Conway, Nevin and Cricceith, respectively sharing in the election with Carnarvon, is in the inhabitants of those respective places paying scot and lot." That put in on behalf of the sitting member was, "that the right of voting for members to serve in Parliament for the borough of Carnarvon, and the several contributory boroughs, before the passing of the statute 2d & 3d Will. 4, was in the burgesses of the respective corporations duly admitted and sworn."

Evidence in support of the right claimed by petitioners.

The petitioners then produced the following documentary evidence. The charter of 12th Edw. 1st, dated at Flint, 8th September 1284, to the town of Carnarvon, which had been confirmed on *Inspeximus* by various succeeding sovereigns, and lastly by Queen Elizabeth. It granted "that our town of Carnarvon be henceforth a free borough, and that the men of the same town be free burgesses, and that the constable of our castle of Carnarvon who shall be for the time being, shall be mayor of that borough, sworn as well to us as to the said burgesses, who having first taken his oath for preserving our rights, shall swear to the same burgesses, upon the gospels of God, that he will preserve the liberties to the same burgesses granted by us, and faithfully do those things which to the office of mayoralty belong in the same borough; also we grant that those burgesses may yearly, on the feast day of St. Michael, choose for themselves, and present to the said constable, as their mayor, two fit and sufficient bailiffs, who in the presence of the said mayor and burgesses shall swear that they will faithfully perform and execute the office of their bailiwick. Also we will and grant that the aforesaid burgesses may have their free prison in the borough aforesaid for all offences there, except

Charter of Carnarvon.

(*a*) The town of Bangor was added to the Carnarvon district of boroughs by the 2d & 3d Will. 4, c. 45, s. 8, schedule (E.)

cases of life and members, in which cases all persons, as well burgesses as others, shall be imprisoned in our castle there; nevertheless if any of the said burgesses shall be arraigned, accused or indicted of any offences, in such cases we will not that they be imprisoned for that cause, so long as they find good and sufficient mainprize thereof, to abide justice, before our chief-justice, or other our justices, there to be deputed. Also we grant, for us and our heirs, to the same burgesses, the undermentioned liberties, to wit: that none of our sheriffs shall enter upon them on account of any suit or action, or any other matter as is aforesaid, and that they may have a guild-merchant, and with a hanse (*guildam mercatoriam cum hansâ,*) and other customs and liberties to the guild appertaining, so that no one who is not of that guild shall carry on merchandize, (*mercandisam faciat aliquam,*) in the same town, unless with the good will (*voluntate*) of our aforesaid burgesses."

Charter of Conway.

The charter of Conway, 12th Edw. 1st, dated at Flint, on the same day as the charter of Carnarvon, and precisely in the same words as it, excepting as to the mayor, who in Conway was to be the constable of Aberconway for the time being.

Charter of Rhythlan.

The charter of Rhythlan, 12th Edw. 1st, dated at Flint, on the same day as the preceding charters, and precisely in the same words as them, except that the constable of *Rothelan* for the time being was to be the mayor.

Charter of Flint.

The charter of Flint, 12th Edw. 1st, dated at Flint, on the same day and precisely in the same terms as the preceding charters, except as to the mayoralty.

Charter of Cricceith.

Charter of Cricceith, dated at Cardigan, 13th Edw. 1st, precisely in the same terms as the preceding charters, except that the constable of Cricceith was to be the mayor.

Charter of Pwllheli.

The charter of Pwllheli dated 1st Feb., 12th year

of the principality of Edward the Black Prince, in these terms: Edward, eldest son of the illustrious King of England and France, Prince of Wales, Duke of Cornwall, and Earl of Chester, to the archbishops, bishops, abbots, priors, justices, sheriffs, reeves, ministers, and all his faithful men to whom these presents shall come; Know ye that we, with the will and assent of our beloved and faithful Nigel de Lohareyn, Knight and Chamberlain, to whom we have lately given and granted the towns of Nevin and Pwllheli, with the appurtenances, in North Wales, for the term of his life, for a fine of 24 *l.* to us, by the community of the men of the said town of Pwllheli made, have given and granted, for us and our heirs, to the men of the said town of Pwllheli, "that the said town of Pwllheli be henceforth a free borough, and that the men inhabiting the said borough be henceforth free burgesses, and that they may have a merchant guild, with a house, and all liberties and free customs to a free borough appertaining, to wit, such liberties and customs as our burgesses in the town of Newborough, in the county of Anglesea, have in their borough there."

Charter of Nevin.

The charter of Nevin was from Edward the Black Prince, of the same date, and precisely in the same words as that of Pwllheli, except that the amount of the fine paid to him was 36 *l.*, and it contained the same reference to the charter of Newborough.

Charter of Newborough.

The charter of Newborough, by Edward the Black Prince, dated the 3d of May, 31st Edw. 3d. It granted and confirmed to the men of our town of Newburgh, in Anglesea, "that that town shall be henceforth a free borough, and that the men inhabiting the same borough shall be free burgesses, and that they may have a merchant guild, with a hanse, and with all liberties and free customs to a free borough belonging, such, to wit, as our free burgesses of Rothelan have in their borough."

Writ and return for Carnarvon, 33 Hen. 8.

A writ to and return by the sheriff of the county of Carnarvon, in the 33d Hen. 8th. They were both in a very decayed state. In the writ, after the directions to the sheriff to cause to be chosen a knight of the shire, was a blank, and then, "aforesaid, and of the borough called Le Shire Town of the same, one burgess, of the more discreet and more sufficient;" after which followed another blank. In the return, after mentioning the election of a knight of the shire, a blank occurred, after which followed these words, "dwelling in the said county, and one burgess to wit, John Puleston, Esq., a burgess" (here there was a blank) "of Carnarvon aforesaid, who is, and then was, one of the more discreet and more sufficient men dwelling in the said (blank), who now exercises, and for some time has exercised, the office of justice there."

Proof of right of voting in the Flint boroughs.

The 21st volume of the Journals was put in to prove the determination as to the right of election for the Flint district of boroughs. It was in these terms: "Resolved, that the right of election of a burgess to serve in Parliament for the town of Flint, in the county of Flint, is in the inhabitants of the boroughs of Flint, Rhyddlan, Overton, Caerwys and Caergurley, paying scot and lot (*b*)." And parol evidence was given of the

(*b*) 21st May 1728, 21st Journals, p. 174. There have since been two contradictory decisions of the House of Commons on the right of voting in the Flint boroughs. On the hearing of an election petition for those boroughs before the whole House on the 5th of April 1737, the counsel for the petitioner proposed to add to the poll Matthias Rogers, by proving that his landlord paid scot and lot for the tenement which he inhabited. A resolution, that the inhabitants of the several boroughs of Flint, Rhydland, Caerwys, Caergurley and Overton, including Knolton and Overton Foreign, renting lands or tenements, for which the landlords thereof only pay scot and lot, have a right to vote in the election of a member to serve in Parliament for the borough of Flint, in the county of Flint, was carried by a majority of 149 over 115; 22 Journ. 840. On the 19th of March 1741, the counsel for the petitioner in another petition respecting the same boroughs, obtained leave to question the resolution of 1737, and after evidence had been brought forward in proof of the custom in the boroughs on the part of the sitting

voting by the inhabitant householders at the last contested election for those boroughs, before the passing of the Reform Act, (the poll-books of which were proved to have been lost); and the register for the year, containing a list of inhabitant householders, signed by the revising barristers for that borough, was put in.

Evidence was then given that 67 inhabitant householders of Pwllheli had sent in claims, to the recorder and town-clerk of that borough, to be inserted in the list of voters; that he had consequently made out a list of inhabitant householders paying scot and lot, and given it in to the revising-barristers, who, after considerable argument, rejected them all. That at the election of 1830, an objection had been taken before the assessor, as to the right of non-resident burgesses to vote, and in the course of the discussion upon it, the claim of the inhabitant householders to vote for these boroughs was brought forward, and was over-ruled by him, the right of voting which had previously been exercised within memory having been that stated on behalf of the sitting member. Two books, purporting to be record-books of the courts held by the corporation of Nevin since 1793, with long rolls of paper, or tails, attached to them, one of three or four yards, and the other of rather more than one yard, covered with stamped admissions of burgesses, were then produced by the recorder of Nevin, a custom-house officer. This person admitted, in his examination, that these books had been written by him, and the stamps procured, in 1831, for the purpose of being produced before the assessor at the contested election in that year. It was also stated, that these tails increased in length during the contest, and it appeared that several admissions were entered, and stamped twice, once in the bodies of the books, and again in the tails.

member, who supported the right as established by the resolution, that resolution was put in the same words as before and negatived; 24 Journ. 137. See the later authorities on the point thus raised, collected *ante*, p. 15, note(q).

The recorder's statement was, that he had kept an account of the admissions of burgesses in a twopenny book, which he had lost, and that he had made out these books and tails from this twopenny book and his recollection. At the election in 1831, a witness came forward and swore before the assessor, that he was present at the admissions of many of the persons whose names appeared on the roll.

Mr. Harrison and Mr. Serjt. Merewether, in support of the right of voting claimed on behalf of the petitioners.

The two rights of voting which are now claimed by the respective parties are, on our side the common law right of the realm, in default of any positive statute or prescription to the contrary; on the other side, the right of the corporators alone, a right which it is in the power of the corporation to contract or enlarge, to grant to as many or as few as it shall choose, without check or control of any kind. The definite nature of the right we claim, that of voting for every man who inhabits a house, and contributes to the public burthens of the borough, is not only the one most agreeable to our early ideas of constitutional rights, but has been adopted, with the restriction only of the annual value of the house to 10 *l.*, in the Reform Act, and has now become the general franchise in every city and borough in the kingdom. The point, however, which is now to be debated, refers solely to the ancient rights which existed previously to the passing of that Act, and have been reserved by its provisions. The earliest determinations which we have recorded of the House of Commons on the right of voting, are those which are preserved in Glanville; and in the *Pontefract case* (*c*), reported by him, we find the first resolution to be,

(*c*) Glanville's Reports, p. 142.

"Where no constant and certain custom appeareth, who should be the electors in a parliamentary borough, there recourse must be had to the common law or common right;" the second, "that the said charter of incorporation, (which was one of Henry the 4th, creating a corporation of a mayor and 12 aldermen), doth not in words extend, nor can the matter of any charter be of force to abridge, that common right in case of an election to the Parliament;" the third, "that of common right all the inhabitants, householders and residents within the borough, ought to have voice in the election, and not the freeholders only, as was now pretended on the part of Sir Richard Beamond, who claimed to have the greatest number of voices of men so qualified." In the same spirit was the 2d resolution in the *Chippenham case* (*d*), reported by the same author: "That the charter of Queen Mary, (which granted that the borough should be a corporation of a mayor and 12 burgesses,) did not nor could alter the form and right of election of burgesses in the Parliament within the said borough from the course there before time out of mind held, so as if before this said charter all the burgesses and inhabitants called freemen, or any larger body of qualified persons, had always used and ought of right to make the election, then the charter, although it may incorporate this town, which was not incorporate before, or may alter the name or form of the corporation there, in matters concerning only themselves and their own government, rights and privileges, yet it cannot alter and abridge the general freedom and form of elections for burgesses in the Parliament, wherein as aforesaid the commonwealth is interested. For then, by the like reason that it might be brought from the whole commonalty, or from all the burgesses of a town to a bailiff and twelve, so might it be brought to a bailiff and

(*d*) Glanville's Reports, p. 54.

one or two burgesses, or to the bailiff alone, which is against the general liberty of the realm, that favoreth all means tending to make the election of burgesses to be with the most indifferency." And in the *Cirencester case*, we are told also by Glanville, that the first resolution was (*e*), "that there being no certain custom nor prescription who should be electors and who not, we must have recourse to common right, which to this purpose was held to be, that more than the freeholders only ought to have voices in the election, namely, all men inhabitant householders, resiants within the borough." Such being the early resolutions, both of the House and of the most learned Committee that ever sat, comprising the names of all the great lawyers of the age of James the 1st, it is extraordinary that so many and such various deviations from the old common law right of voting, are to be found in different cities and boroughs. One very prominent reason was, doubtless, the clause introduced into the Bribery Act (*f*), in the reign of Geo. 2, which renders the last determination of the House final as to the right of voting in every borough. Here, however, there is no determination of the House as to the right of voting, and the Committee ought to determine in favor of the common law right, unless it is clearly shown to have been superseded by an unbroken and established usage and prescription. If however any attempt is made to prove usage on the other side, on the part of the petitioners there will be shown such tampering with it that it cannot be supported. Corporations indeed can hardly be said to have existed in those small boroughs. The want of anything like an acting corporate body in Nevin is clearly shown by the absence of all authentic records of their proceedings. It lies upon the other side to show that regular corporations have existed in

(*e*) Glanville's Reports, p. 107. (*f*) 2 G. 2, c. 24, s. 4.

the other boroughs; it is enough for us to prove that the charters of these boroughs treat as burgesses the same class of persons for whom we now claim the right of voting.

By the ancient laws, so far back as the time of the Saxon kings, if a stranger remained more than three nights in any place, he was considered as an inmate, and his host became answerable for him; if, however, he continued a year and a day, he was considered as an inhabitant; and, if above the age of 12 years, he was bound to attend the court leet, to be sworn to be faithful and loyal to the King; Kitchen on Courts (*g*). Who then are the persons to whom the charters of all these towns grant that they shall be free burgesses? The charters of Carnarvon and Conway are of the same date, and grant that "the men" of the same towns be free burgesses. The charter of Cricceith, which is of one year later date, grants that "the men" of that town also are to be free burgesses; and those of Pwllheli and Nevin grant also that the "men inhabiting the said boroughs be henceforth free burgesses." Can it be doubted that these terms "men," and "men inhabiting these boroughs," meant the inhabitants paying scot and lot? To whom else could apply the clause, in the charter of Carnarvon, which directed that they should choose two bailiffs out of themselves, who were to be sworn in the presence of the mayor and burgesses, or that which exempted them from the sheriffs' jurisdiction, or that strangers should not carry on trade within their borough unless by their leave, except to inhabitant householders? In the same way the burgesses are to have their free prison, which could only be a benefit to inhabitant householders, except in cases of life and limb, and then as well they as others, that is,

(*g*) P. 6. See also for the authorities on this subject, Merewether *West Looe case*, p. 74.

ecclesiastics, strangers, residents whose year and day had not expired, were to be committed to the king's prison. The principal reason, indeed, for the foundation of boroughs in ancient times was the granting them an independent jurisdiction of their own, and a dispensation with their attendance at the sheriff's court. Dr. Brady, indeed, maintains that they were founded for the sake of the *guilda mercatoria*, but he is a writer too dishonest to be depended upon, and upon this point is evidently mistaken. The grant of the guild was quite unconnected with the grant of incorporation of the borough, and the benefit of it was, that it defined who should have the liberty of trading in the town, and the persons who were forbidden to trade there, without the leave of the burgesses, were travellers or women, who, in many ancient boroughs, as in London, were entitled to trade. The fact that the inhabitant householders were meant to be the burgesses by the charter, was still more clearly proved by the insertion of the clause of freedom to the slaves who should remain there for a year and a day, which was almost in the words used by Glanville, "*Si quis nativus quiete per unum annum et unam diem manserit, ita quod in eorum communiam scilicet gyldam tanquam civis acceptus fuerit, eo ipso a villenagio liberabitur* (*h*). When the slave had resided a year and a day, he became an inhabitant amenable to the jurisdiction of the court leet; but the words of the charter were, that he should scot and lot with the same men. Who were "the same men," but the men to whom the charter had granted that they should be burgesses? The definitions of the word "burgess," by our best antiquarians, show that the word "burgesses" means "inhabitants." Thus Spelman says, "*Burgarii et burgenses sunt burgorum villarumque clausarum seu munitarum habitatores.*" Whitelock

(*h*) Glanville, lib. 5, s. 5.

says (*i*), that burgesses are the inhabitants and freemen of boroughs. Madox, in his *Firma burgi* (*k*), says, "that in early times there was no distinction between citizen and burgess, but a burgess was an inhabitant either of a town or city." In many cases the House of Commons has also decided that burgesses and inhabitants are synonymous terms, as in the *Abingdon* (*l*), *Aldborough* (*m*), *St. Ives* (*n*), and *Hindon* (*o*) cases.

A still more important parliamentary recognition of the true meaning of the word burgess is to be found in the 35 Hen. 8, c. 11, which regulates the payment of the fees and wages of knights and burgesses to serve in Parliament; for that provides, that "forasmuch as the inhabitants of all cities and boroughs in every the said shires within Wales, and in the said county of Monmouth, not finding burgesses for the Parliament themselves, must bear and pay the burgesses within the said shire towns of and in the said shires, &c., that from the beginning of the said Parliament the burgesses of all and every the said cities, boroughs and towns, which be and shall be contributory to the payment of the burgesses' wages of the said shire towns, shall be admonished, by proclamation or otherwise, by the mayors, bailiffs, or other head officers of the said towns, or by one of them, to come and give their elections for the electing of the said burgesses, at such time and place, lawful and reasonable, as shall be assigned for the same intent by the said mayors, &c.; in which elections the burgesses shall have like voice and authority to elect, name and choose the burgesses of every the said shire towns, like and in

(*i*) Vol. 1, p. 500; see also vol. 2, p. 95.

(*k*) P. 2.

(*l*) 16 Journ. 63.

(*m*) 10 Journ. 418.

(*n*) 14 Journ. 75, Oct. 24, 1702. This and the preceding case, together with many others to the same effect, are collected in the *Liskeard case*, 1 Peck. 126.

(*o*) 21 Journ. 182.

such manner as the burgesses of the said shire towns have or use." Now it is clear, that throughout this section the words burgesses and inhabitants are used indiscriminately, and therefore must have been considered as synonymous. The sense, indeed, in which it was taken at that time is shown by the early return for the borough we have put in, where the member returned is designated not only as a burgess, but as dwelling in the borough.

There is, however, in addition to the evident meaning of this charter, as explained by the ancient law, by the definitions of antiquarians and the language of the statutes, an express decision of the House of Commons in favor of the right we contend for. The charters of Flint and Rhythlan are contemporaneous with those of Carnarvon and Conway, and both these charters, together with that of Cricceith, are precisely in the same terms as those of Flint and Rhythlan; the charter of Pwllheli and Nevin grant, "to the men inhabiting those towns, all such liberties and free customs to a free borough belonging, to wit, such as our free burgesses of Newborough have in their borough;" the charter of Newborough contains the same reference to the liberties and customs of Rhythlan. All these boroughs are therefore under similar charters to those of Flint and Rhythlan; and with regard to those boroughs, we have put in evidence an express decision of the House, that the right of voting was in the inhabitants paying scot and lot; and we have proved that it still continues to be so.

The only argument that can be urged in support of the right insisted on by the other side is, that it has been established by usage. To establish an usage, however, it must be proved to be clear, long and uninterrupted. Can that be said to be the case of a right which has been exposed to such frauds as that now in question has been at Nevin, where the name of corporation-books has been abused and prostituted for the

purposes of election? If, however, they are allowed on the other side to establish a case of usage, still no usage against the express words of charters, as such an usage would be in the present case, can prevail. In *The King* v. *Miller* (*p*), where an usage of 300 years' standing was overthrown, Mr. J. Grose says, "I admit, that where there is any doubt in a statute or charter, it may be explained by usage; but there is no doubt on the words of this statute, and if the usage were to be received here, it would be for the purpose of creating, not explaining a doubt." Here the words of the charters are plain; the early usage cannot be doubted; the later usurpations have been in contravention of the charters, and have only tended to fraud and confusion; and therefore the decision of the Committee in favor of the petitioners may confidently be predicted.

Mr. Pollock, for the sitting member:

The question now before the Committee is one of simple law; they are not called upon to enter into a question of the expediency or inexpediency of the elective franchise for the contributory boroughs of Carnarvon being lodged in the burgesses or in the inhabitant householders, for that point has been determined for them by the Legislature; and all that they have to inquire is, what was the legal right of voting in those boroughs previously to the passing of the Reform Act. Much has been said of the right of voting in all boroughs having been, in ancient times, solely vested in the inhabitant householders. Whatever, however, may have been the case before the time of legal memory, nothing is more notorious than that the right of voting varies in every borough; and although the language of all the early charters granted, that the towns should be boroughs, and the men of the towns should be free

(*p*) 6 T. R. 268.

burgesses, yet in some boroughs the right of returning a representative was vested in the corporation, in others in the freemen; in some in the residents alone, in others in both residents and non-residents, whilst in a few only, the right belonged exclusively to the inhabitant householders. Here, however, the right is contended to be in that body, because a decision of the House of Commons has declared it to be so in the Flint boroughs, and there is a reference in the charter of Pwllheli to that of Newborough, which refers to Rhyddlan, which is one of the Flint boroughs. This reference cannot, however, be applied to a right which did not exist at the time any of the charters were granted, for that of electing a member of Parliament was not given to these boroughs till the reign of Hen. 8. (*q*), centuries after

(*q*) The 27 Hen. 8, c. 26, s. 29, directs that one knight shall be returned for every shire, and one burgess for every borough being a shire town, in Wales. The 3d section of the 35 Hen. 8, c. 11, cited p. 447, *ante*, gives the right of voting in the election of a member in the shire town to the other boroughs in the shire. Some traces of a representation of Wales in the English Parliament may be found, however, at an earlier period of our history. In the 15 Edw. 2, a writ, tested at Rothwell on the 18th of April, was issued to Edward, Earl of Arundel, justiciary of Wales, directing him, on account of the merits of the people of Wales, to cause to come to the Parliament at York "24 de discretioribus legalioribus et validioribus hominibus" of the parts of South Wales, and 24 from the parts of North Wales, having full and sufficient power for the whole community of those parts. This writ is printed in the 1st vol. of the Rotuli Parliamenti, p. 456. No return to it, however, has been discovered, nor is it known whether these 48 members attended at York, see 1st Report of Lords' Committee on the dignity of a peer of a realm, p. 269. A similar writ was issued in the 20 Edw. 2, tested at Kenilworth the 11th of January, to Richard Damory, justiciary of North Wales, directing him to cause to come to the Parliament at Westminster 24 men of those parts, as well English as Welsh. This writ is set out in Co. Instit. pt. 4, c. 47, pp. 240, 241. In the margin, Sir Edward Coke states, that of these members, 12 were English and 12 Welsh; and in the text he says, that by this writ, and others of the like nature, it appears that Welshmen were, in the reign of Edw. 2, Edw. 3, &c., called to our Parliaments. This writ, and the return, have been recently printed in the Parliamentary Writs published by Mr. Palgrave, vol. 2, division 2, p. 364. The return states, that the justiciar had caused

the date of the charters. But then it is said that, if no right of voting was given by the charters, recourse must be had to the common law, which vests it in the inhabitant householders; and to prove this, the *Pontefract*, *Cirencester* and *Chippenham* cases are cited from Glanville. The two former of these cases establish, that recourse is to be had to the common law, when no constant and certain custom appears; the latter, that a charter granted by Queen Mary did not alter the right of election, if before the charter all the burgesses and inhabitants called freemen, or any other larger number of qualified persons, had always used, and ought of right to make the election. The propositions established by

to come to Parliament two members for each of the three towns of Conway, Carnarvon and Beaumaris, by their manucaptors (all of whose names, as well as those of their manucaptors, are English), and six members from the counties of Carnarvon and Anglesea (all of whose names, together with those of their manucaptors, are Welsh). As to the county of Merioneth, there is a special return that Griffin ap Rees, the sheriff of the county, who had been directed to come to the said Parliament, and also to cause to come Eyngo Vaghan, and four other Welsh names, had returned the precept, "Quod erit ad Parliamentum si tempus fuerit commode, and the aforesaid Eyngó, *et alii*, would not find any manucaptors." It is observed, in p. 288 of the Lords' Report before referred to, that this writ did not issue till the Parliament had actually met, and could not have been executed until Edw. 2 had resigned his crown, which he did on the 24th January, 12 days after the date of the writ. No subsequent writ appears to have issued for members to Wales until the 27 Hen. 8. With regard to the distinction between the English names of the representatives of boroughs, and the Welsh for those of counties, it seems probable that Edw. 1, when he founded those boroughs, immediately after the conquest and death of the last aboriginal princes of Wales, colonized them with English subjects, as his grandson, Edw. 3, did Calais. The 2 Hen. 4, c. 22, provides, that no Welshman should in future be permitted to purchase lands or tenements in England, or within the English boroughs in Wales, on pain of forfeiture of them; and that no Welshmen should be accepted as a burgess, or have any other liberty in the kingdom, or the aforesaid boroughs; and in the Rolls of Parliament, we find a petition, that none of the Welsh rebels should be pardoned until they should have paid fines according to their degrees; so that by the said sums and otherwise, "Les burghes Engleis Villes pourront estre re-edifiez et re-estabiliez en manière que le noble et sage Edward le premier avant ces heures ordeigna et devisa." Rot. Parl. vol. 3. p. 47. No. 102.

these cases are not disputed, and it may be admitted, that if there had been no certain right of election in these boroughs, it would have belonged to the inhabitant householders; and that if they had always used, and ought of right to have made the election, the right to do so could not now be claimed exclusively for the burgesses; but we say that since these boroughs have had the right of returning members, there has been a constant and certain custom of voting by the burgesses alone, and that the inhabitant householders have never used, or have been proved to have, the right of making the election. The usage of centuries is in our favor, and the law of Parliament has always recognized the usage as establishing the right.

An attempt has been made to attach blame to the clause in the Bribery Act, which provides that the last determination shall be final, on account of its causing the variety of rights of voting that existed before the passing of the Reform Act. Long before the Bribery Act, however, different rights of voting existed, and no fault ought to be found with an enactment which, by the putting an end to a never-ceasing cause of dispute, was calculated to produce peace and tranquillity in the country. But if an imputation is to be thrown upon the Bribery Act for attempting to produce such consequences, must not the Reform Act come in equally for its share of reproach, because the principal object of it was, by establishing one uniform system of voting in all the boroughs in the kingdom, to put a stop to all future discussions. No one could have imagined, when that Act passed, that such a claim as the present could ever have arisen; for the only ancient rights, besides those of burgesses and freemen, which it reserved by the 33d section, were those "of persons now having a right to vote in the election for any city or borough;" and such a person it enacted "should retain such right of voting so long as he should be qualified as an elector, according to the usages or customs

of such city or borough, or any law now in force." Can it be said that these inhabitant householders had a right to vote at the time of the passing of the Reform Act, or that they were qualified as electors according to the usages or customs of these boroughs? It is incumbent, however, upon the petitioners to establish both these propositions, otherwise their right is not reserved by the provisions of the Reform Act, and consequently does not now exist. What, then, is the evidence of custom or usage? No proof of any inhabitant householder having voted for these boroughs has yet been produced; no evidence has been brought forward of any of them having even claimed until 1831, when for the first time it was attempted to set up a claim of this kind at Carnarvon, which was not, however, persevered in at the election in 1832; and it was not until after the passing of the Reform Act, that the present claim was instituted, by 67 out of 300 inhabitant householders of Pwllheli sending in notices to the town-clerk and recorder, who was not the proper officer to receive them, or to make out a list of them; for his duty was only to make out lists of the burgesses. The whole evidence that has been given, goes to establish the right of voting to have been exclusively in the burgesses, ever since the boroughs returned members to Parliament, and even the very frauds in the corporation-books of Nevin show that in the opinion of that borough they were solely entitled to the franchise.

The doctrine, that inhabitancy constituted a man a burgess, has been completely exploded since the case of *The King* v. *West Looe* (r). An application was there made to the Court of King's Bench by an inhabitant of West Looe for a mandamus to the mayor and steward of the borough to swear him at the court leet as a resiant and burgess. The writ was, however, refused, and Lord Tenterden said, "It has been contended, that by the usage and the charters, every householder

(r) 3 B & C. 677.

resiant has a right to be enrolled at the court leet as a resiant and corporator. It is said, that inhabitancy confers the right, but at the same time it is urged, that the right is confined to householders; if inhabitancy confers the right, what is there to limit it? This charter is in language very similar to many others. Whether such charters were wisely granted, it is not any part of our duty, or is it within our power, to decide. Our duty is to interpret such charters according to the decisions of our predecessors," and then, after stating that an inchoate right resting solely on inhabitancy, or upon that and householding, was a thing perfectly novel, he goes on to say, "This charter certainly confers no such right. Let us then advert to the usage; that is very obscure; and there appears to have been great negligence in keeping the books of the corporation; but there is no usage shown to have existed, either before or after the charter of Queen Elizabeth, which can warrant us in saying that every inhabitant householder has a right to be sworn a corporator, and we ought to find a very clear and urgent usage before we interpose our authority for the purpose of establishing a constitution in this borough unknown to the law and our experience." In that case it was insisted, that an inhabitant householder had an inchoate right to be sworn a burgess; here it is contended, that he is a burgess without having been sworn. There is an observation made by Mr. Justice Bayley in that case, which completely meets another part of the arguments used on the other side: he there says, "the charter of Queen Elizabeth recites a petition from divers of the Queen's subjects, inhabitants of the borough, (and whether this petition was from all or only some of the inhabitants does not appear material), that the inhabitants might be created a body politic and corporate, and then it grants, that the borough of Portbyan, or West Looe, shall be a borough corporate of one mayor and burgesses, being inhabitants of the town. It does not anywhere

state that all the inhabitants shall be burgesses; and it provides for the election of a mayor and capital burgesses, but says nothing about common burgesses. Suppose the legal effect of the charter to have been to make all the inhabitants burgesses (which, however, I take not to have been the case), that would not make all persons burgesses who thereafter might become inhabitants of the borough. No mode of supplying new members to the corporation being pointed out, they would have an incidental power to make regulations for that purpose, and they might lawfully do it by election." Thus every part of the case, on the other side, which depends on the wording of the charters, is met by the deliberate judgment of the Court of King's Bench.

If, however, there were wanting any circumstance to point out the distinction which existed in early times between the inhabitants and the burgesses, it would be found in the enactments of the stat. 35 Hen. 8, c. 11, which first gave the right of sending members to Parliament to the contributory Welsh boroughs; the preceding statute of 27 Hen. 8, c. 26, s. 29, having only given that right to the boroughs which were shire towns. The 3d section of this latter statute provides, "that forasmuch as the *inhabitants* of all cities and boroughs in Wales, not finding burgesses for Parliament themselves, must bear and pay the burgesses' wages within the shire towns, that from the beginning of that Parliament the *burgesses* of all and every the said cities, boroughs and towns, which should be contributory to the payment of the burgesses' wages of the shire towns, should be specially admonished to come and give their elections for the electing the said burgesses at such time as should be appointed, &c., in which elections the *burgesses* should have like voice and authority to elect, name and choose the burgesses of every the said shire towns like and in such manner as the *burgesses* of the said shire towns had or used;" and the 4th section gives special directions,

that two justices of the peace should have full power to lot and tax every city, borough and town, for the portions and rates they should bear and pay towards the said burgesses within the shire towns; which rates should be again "rated and taxed on the *inhabitants* of every the said cities and boroughs, by four or six discreet and substantial *burgesses* of every the said cities and boroughs in Wales, thereunto named and assigned by the mayor, bailiffs, and other head officers of the said cities and boroughs." A more marked distinction could hardly be drawn between the inhabitants and burgesses; and whatever may have been the ancient rights of the inhabitants under the charters in other respects, it is clear that the right of electing members was only bestowed upon the burgesses. No subsequent usage, even if it were possible for an usage to destroy so clear a right, has been proved, to show that the inhabitants acquired this right in after-times, and it is to be hoped the Committee will not now give them what they never possessed, and never could have laid claim to, under the statute which bestowed the elective franchise on their town.

Mr. Serjeant Merewether, in reply, on the authorities cited:

In *The King* v. *West Looe*, the words of the charter were, "that the said borough should thenceforth be a free borough corporate of one mayor and burgesses, being inhabitants of the town aforesaid," so that it was contended, that it did not incorporate all the inhabitants. In this case the words in all the charters are, that either "the men" or "the men inhabiting the same borough," shall be free burgesses, so that a doubt upon the class of persons who were originally made burgesses cannot be raised. As to the section that has been cited of the Reform Act, it is not disputed, that all rights which have been acquired by usage are reserved; but it is assuming the whole question to say that this is an usage,

when the petitioners insist that they have proved it to be an usurpation.

The Committee determined, that the right of election, as set forth in the statement delivered in by the counsel on the part of the petitioners, was the right of election for the boroughs Carnarvon, Conway, Pwllheli, Nevin and Cricceith, and that the right of voting, as set forth in the statement delivered in by the counsel on the part of the sitting member, was not the right of voting for the said boroughs.

Wm. Jones' case. A Committee has jurisdiction in the case of a voter, whose name was inserted in a list made out by a person not authorized by the Reform Act, and produced by him before the revising barrister, if the case was decided upon by the barrister.

The case of one of the claimants in the list of inhabitant householders, made out by the recorder of Pwllheli, was then entered upon; it was proved by the poll-books that that claimant's vote was entered *de bene esse.*

Mr. Pollock:

Inhabitant householders are a class of persons of whom, by the 44th section of the Reform Act, the overseers are directed to prepare lists; and who, if omitted from that list, are, by the 47th section, directed to send in a notice of claim to the overseers. There is a special clause at the end of the 50th section, providing, that unless such a notice of claim has been sent in, the name of no person shall be inserted by the revising barrister in the list. A person, therefore, who has not sent in his notice of claim to the overseer, has no right to appear before the barrister; and it has been constantly decided this session, that Committees will not suffer cases to be discussed that have not been heard before the barrister. The mere circumstance of the barrister having heard a case, which he had no jurisdiction whatever to hear, can make no difference.

Mr. Serjt. Merewether:

The jurisdiction of Committees is founded on the 59th & 60th sections of the Reform Act; by the first of these, any one whose name has been omitted from any register,

in consequence of the decision of a revising-barrister, may tender his vote at an election; by the second of them, that any petitioner before a Committee may show that the name of any person who tendered his vote at an election was improperly omitted from the register by the decision of the revising-barrister. This person's name has been omitted from the register in consequence of the barrister's decision, and it is consequently a case which completely falls within the jurisdiction of the Committee. In both the *Petersfield* (*s*) and *Bedford* (*t*) cases, where the barristers had decided upon cases which were brought before them by defective notices, the Committees held that they had jurisdiction, and allowed the votes to be discussed. The principle on which they had proceeded was, to require proof that the barrister had heard the cases, not whether he acted rightly in hearing them.

Mr. Pollock, in reply:

In both the cases cited the voter's name was in the lists made out by the proper officers, and produced by them to the barrister, and the cases therefore properly came within his jurisdiction. Here the case never could have been properly brought before him, and if it was heard by him, it was *coram non judice*.

The Committee resolved, "that it was their opinion that they were authorized to decide on the validity of the vote in question."

Mr. Pollock then submitted, that the lists delivered in to the barrister ought to be proved, upon which some discussion ensued between him and Mr. Russell. The Committee then determined, that the lists ought to be put in, but that this resolution was to be taken as confirming the last resolution of the Committee.

The lists, signed by the revising barristers, were then

(*s*) *Ante*, p. 46, Cookson's case.

(*t*) *Ante*, p. 137, Lawson's case. See also George Snowden's case, *Ripon*, *ante*, p. 204.

put in, but the list of claims by the inhabitant householders of Pwllheli was not amongst them. Mr. Pollock then inquired whether, although the names did not appear on any list proved to have been before the barristers, the other party would be entitled to enter into the consideration of their votes. The Chairman stated, that such was the opinion of the Committee.

Printed copies of the lists produced before the barrister are admissible in evidence.

Evidence was then given that the list of these claims handed in to the revising-barristers had been lost, but printed copies of it were produced, and it was proved, that after hearing one of the cases, they decided that they would not admit the claims. Evidence also was given, that the voter in question was a householder.

Mr. Pollock then abandoned the case on behalf of the sitting member.

A Committee, although no register is produced, may strike off or add names to the poll.

The petitioners proceeded, however, with theirs, in order to put on the names of the Pwllheli claimants, who had voted for Sir C. Paget, and to strike off the names of such of the burgesses as they had objected to. An objection was then taken by Mr. Hughes, of Aberystwith, who had been an agent of Major Nanney's, that the Committee could not proceed to either put on or strike off names from the poll, until the register had been put in.

Mr. Hughes:

The lists, which have been put in, are not the register, which is to be made out by the returning-officer, and not by the barristers, and which therefore must be authenticated and proved in a different manner from the lists. According to the decisions of the Committees this session, a petitioner cannot, as formerly, dispute the validity of every vote upon the poll, he is only, according to the 60th section of the Reform Act, "to impeach the correctness of the register of votes in force at the time of the election." How can he impeach the correctness of what is not produced? or how can he even prove that the name of a voter was omitted from

the register in consequence of the decision of the barrister, which he must do, according to the 59th section, before he can establish the right of that voter to tender, unless the omission is shown on the face of the register?

Mr. Serjt. Merewether:

The part of the Reform Act by which a returning-officer is enjoined to make out a register of the voters is merely directory; and according to the established doctrine (u) in such cases, although the officer is punishable for non-observance of the directions of the statute, yet the whole of the *res gestæ* are not to be invalidated through his default. The statute directs throughout that no one shall vote unless duly registered; supposing no register to have been made, would the vote of every elector, although duly entered on the barristers' lists, be invalid? In truth, however, this was not a question for a Committee; all that the statute required them to do was to alter the poll, it was subsequently the duty of the House to amend the register accordingly.

The Committee over-ruled the objection; and the petitioners, without producing the register (which it was reported had never been made), proceeded with their case, the result of which appears by the final report of the Committee. This was, after stating the delivery in of statements of the rights of voting by the counsel on each side, and their determination thereon, as *ante*, p. 457, that Major Nanney was not duly elected; that Sir Charles Paget was duly elected, and ought to have been returned; that neither the petition nor the opposition to it were frivolous or vexatious; and that they had altered the poll taken at the last election, by adding to such poll the names of Pierce Daniel, &c. (54 names in all), and by striking off such poll the names of Richard Butler Clough, &c. (113 names in all).

(u) See Mr. Follett's argument in the *Limerick case, ante*, p. 366.

The corporation books of Nevin were produced by a person, who deposed, that he had received them from the recorder, and had kept them carefully ever since. Mr. Follett objected, that this was not a sufficient identification of the books. As documents, they ought to be produced by the officer of the corporation, in whose custody they were deposited, as was invariably the practice in the courts of law. Mr. Serjeant Merewether contended, that their identity was sufficiently proved, and cited *Bullen* v. *Michell* (*x*). The Committee determined, that the evidence was not sufficient, and the recorder was accordingly called.

The officer having the custody of corporation books must himself produce them.

(*x*) 2 Price, 413.

ELECTION CASES:

CASE XXV.

BOROUGH OF MONTGOMERY.

The Committee was appointed on the 22d of May 1833, and consisted of the following Gentlemen:

Sir Thomas Edward Winnington, Bart., M. P. for Bewdley, (*Chairman.*)

The Earl of Lincoln, M.P. for South Nottinghamshire.
James Emerson Tennant, Esq. M. P. for Belfast.
The Hon. Sidney Herbert, M. P. for South Wiltshire.
Lord James Fitzroy, M. P. for Thetford.
Thomas Hudson, Esq. M. P. for Evesham.
Lord Arthur Chichester, M.P. for Belfast.
William Nugent Macnamara, Esq. M.P. for Clare County.
John B. Rd. O'Neill, Esq. M. P. for Antrim County.
Robert Middleton Biddulph, Esq. for Denbighshire.
The Hon. Frederick George Howard, M.P. for Morpeth.

Petitioners:—Electors.
Sitting Member:—Colonel Edwards.
Counsel for the Petitioners:—Mr. Harrison and Mr. Corbett.
Agents:—
Counsel for the Sitting Member:—Mr. Serjt. Merewether and Mr. Serjt. Heath.
Agents:—Messrs. Sweet & Carr.

THE petition stated, that Mr. Corbett and Colonel Edwards were candidates at the election in the month of April 1833, which took place on the seat of Mr. Pugh having been declared void by a Committee of the House, by reason of his having, by himself and his agents, been guilty of treating at the general election; that the

petitioners claimed and had a right to vote, and did vote at both elections; that at the general election, Colonel Edwards was also a candidate in opposition to Mr. Pugh, but that Mr. Pugh had a majority; that the petition presented against Mr. Pugh's return was signed by electors, and prayed, that his election might be declared void, but did not pray, that the return might be amended by declaring Colonel Edwards duly elected; that a new writ having been issued for the election of a member in the place of Mr. Pugh, such new election was held at, &c., and the numbers polled for Colonel Edwards were declared by the returning-officers to be 331, and for Mr. Corbett 321, leaving a majority of 10 for Colonel Edwards, who was thereupon declared duly elected; that this majority was only colorable, and if the corrupt and unconstitutional practices therein set forth, had not prevailed and been corruptly used, in violation of the freedom of election, by Colonel Edwards, his agents, friends, partizans, or persons employed on his behalf, at the election in December 1832, as well as at the election in April 1833, Mr. Corbett would have been elected and returned, instead of Colonel Edwards; that before, and at, and during the election in December 1832, and also before, and at, and during that in April 1833, Colonel Edwards, by himself, his agents, friends and partizans, or persons employed on his behalf for the same several elections respectively, bribed various persons having and claiming to have votes at the said elections, by and with divers sums of money, presents, gifts or rewards, and by other corrupt practices and means, to vote thereat respectively for him, and to forbear to vote for Mr. Pugh at the election in December, and for Mr. Corbett at the election in April; it also contained a charge of treating, against Colonel Edwards, at both elections; and also that Colonel Edwards, by himself, his agents, &c., between the period of the teste and return to the

writ for the election in December 1832, and during the sitting of Mr. Pugh, and subsequently to the decision of the Committee, and particularly after the teste of the new writ, by bribery, treating, and other corrupt practices and means, and also by promises of profits, rewards and payments, and by threats and corrupt representations, that the performance of the promises made at and previous to the election in December 1832, depended upon the persons, to whom or in whose favor such promises had been made, continuing their support to him at such new election, procured, or endeavored to procure, various persons having or claiming to have votes in such last-mentioned election, to vote thereat for him, and to forbear to vote for Mr. Corbett; and it also contained charges that the register was incorrect, and prayed a declaration, that the election of Colonel Edwards was null and void, and that Mr. Corbett was duly elected, and ought to have been returned.

Treating at the previous void election is not admissible in evidence against an unsuccessful candidate at that election, for whom the seat was not then claimed.

Upon Mr. Harrison's proceeding in his opening to state the grounds, on which he conceived himself entitled to go into the treating at the election in December, Mr. Serjt. Merewether objected to his entering into any allegations respecting conduct at the former election.

Mr. Harrison insisted, that the proper period for making the objection was, when he produced any evidence relating to the former election, and that he ought to be permitted to state his whole case, as he thought proper, without interruption. The *New Malton case* in 1808 (*a*) was a case precisely in point. There Mr. Bryan Cooke and Lord Headley had been candidates at

(*a*) Minutes, 10th May 1808. In the *Camelford case* there were similar allegations as to bribery and treating at a previous election, which had been declared void, and the sitting members were upon this petition unseated; Cor. & Dan. 309. The objection to their being proceeded upon, was taken immediately after the opening. In the 2d *Seaford case*, upon a scrutiny, evidence was admitted on the part of the sitting member, of the bribing of a voter at a previous void election, by one of the petitioners, who had then been a candidate, but had not petitioned; 3 Luders, 110.

one election, and Lord Headley had been ousted upon the evidence brought forward by Mr. Cooke. There was a second election, at which Mr. B. Cooke and another gentleman were candidates, and Mr. Cooke was returned. A petition was then presented against him, on the ground of bribery and treating, both at the first and second elections (from a copy of which, in Hands on Elections, the form of the present petition was taken); the counsel for the petitioners opened their case, proved the poll, and then proceeded to bring forward evidence of the facts at the first election; an objection was immediately made to its reception, and the point of its admissibility was argued by Mr. Serjeant Lens and Mr. Warren on the one side, and Mr. Dallas and Mr. Wetherell on the other; and it was determined that the evidence should be proceeded with; but the petitioners ultimately failed in making out a case. This case was only stated to show the mode of proceeding in cases of this kind, and the counsel on the other side were hardly entitled to put it on another footing.

Mr. Serjt. Merewether,

We are not now upon the question which has been gone into, to a certain extent, on the other side, but only considering the time when it should be discussed, which is not a question of precedent, but one solely for the consideration of the Committee. It certainly would be inverting the order of things, to allow a statement to be made of facts, respecting which it would afterwards be matter of discussion, whether any investigation of them ought to be permitted; and practical utility would decide that the time of the Committee would be saved, by hearing the objection in the first instance.

The Committee resolved, that Mr. Harrison be directed to confine himself exclusively to the proceedings of the election in April last, in his opening speech.

After some discussion, in the course of which Mr. Harrison stated, that the bribery alleged to have been committed at the last election, was so connected with the agency at the former election, that the one could not be made out without going into the other, he proceeded to state his case briefly, and after referring to the general law as to bribery and treating, as founded upon the Acts of 2 Geo. 2, and 7 Wm. 3, c. 4, and upon the resolutions of 1677, and of the 18th of February last, and citing the notes of Lord Glenbervie on the *St. Ives case* (*b*), *Felton* v. *Easthope* (*c*), and the *Chester case* (*d*), he submitted, that the reason why acts done at one election might be proved in order to avoid a second was, that a candidate should not be permitted to avail himself of his previous corruption, and that Colonel Edwards not having been a party to the former petition, which simply prayed that the election should be avoided, no evidence of bribery and treating could be on that occasion brought forward against him (*e*).

(*b*) 2 Dougl. note (B.) p. 400. (*c*) Rogers on Elections, 220.

(*d*) Corb. & Dan. 68.

(*e*) Where a petition by electors prays, that another person may be declared to have been duly elected in the place of the sitting member, it would seem that evidence of bribery and treating by that person may be adduced on the trial of the petition, in case the question shall arise, whether he shall sit or not; for, as it is stated and laid down in several early authorities, that a counter-petition cannot be presented against the pretensions of a candidate who himself petitions; *Middlesex*, 1 Peck. 294; *New Windsor*, 2 Peck. 193; 2d *Ilchester*, ibid. 230; unless it were competent to give such evidence, or unless a counter-petition may be presented, against a candidate for whom the seat is claimed by electors, (which possibly may be done, as it does not fall within the reason of the above authorities) no means are furnished by the existing law, of trying the question of due election in such a case as the above. In the *Southampton case*, *ante*, p. 237, after Mr. Penleaze had been declared duly elected, a petition was about to be presented against him, on the grounds of want of qualification and acts of bribery; the Speaker, however, expressed his opinion, that the petition could not be received, as both these allegations might have been brought forward on the hearing of the petition against Mr. Hoy. The first of these objections might clearly have been tried under the provisions of the standing

The production of poll-books by the returning-officer, is not sufficient proof of them.

Mr. Jones, the bailiff and returning-officer of the borough of Montgomery, was then called to prove the poll. He produced the poll-books; he stated that he had received them from the town-clerk, with whom he had deposited them at the close of the election; that he had been returning-officer at the former election, had deposited them with the town-clerk in the same way at the close of it, had obtained them from his custody, and produced them before the former Committee in this Session without objection. The town-clerk was appointed by the recorder; he was the officer of the corporation, of which he (the returning-officer) was, as bailiff, the head; and the corporation papers were kept in the town-clerk's office.

Mr. Serjt. Merewether:

There is no point on which Committees require more strictness, than in the proof of the poll. The *Londonderry case* (*f*) in this Session is an instance of this. It is always required, that the poll-books should have been in the proper custody, and should be produced in the state, in which they were at the close of the elec-

order of the 6th of February 1784–5; see *Dover case*, note (A), *ante* p. 422. A similar opinion was expressed by the Speaker in the case of a petition against Mr. Blake, who had been seated by the Galway Town Committee. But where an unsuccessful candidate has obtained the seat by the report of a Committee, that he ought to have been *returned*, there the House has given to parties disposed to petition, the same liberty which they would have enjoyed if *the return* had originally been correct, viz. that of petitioning within 14 days after the return, which for this purpose is regarded as made at the time of its amendment, as in the *Carnarvon case*, *ante*, p. 111, and in the cases there cited.

Where a petitioner has claimed the seat, but has afterwards abandoned his claim, the sitting member may go into evidence to prove bribery and treating against him; *Coventry case*, 1 Peck. 99: *New Windsor case*, 2 Peck. 187. In this last case it was argued, that the Treating Act did not apply to unsuccessful candidates; but the contrary has been decided in the late case of *Ward* v. *Nanney*, 3 C. & P. 399.

(*f*) *Ante*, p. 273.

tion. The returning-officer cannot swear that they remained unaltered whilst they were in the custody of the town-clerk. The town-clerk is the deputy of the recorder, whose duty it is to keep the records of the corporation; the poll was therefore properly placed in his custody, and he ought to have been called to prove it.

Mr. Harrison:

In the year 1819 there were conflicting decisions (*g*), as to the proof which was required of the poll. In the *Limerick case*, the Committee held the poll not proved. So much inconvenience arose, however, from this decision, that a statute (*h*) was passed to provide against the inconveniences that would arise from proving the poll from Ireland, and the practice in all Committees has ever since been opposed to the Limerick decision, and it has been universally held, that it is sufficient if the poll is produced from the proper custody. In the *Oxford case* this session (*i*) the returning-officer produced the poll, which he had delivered at the end of the election to the clerk of the town-clerk; an objection was then taken to its proof, and all the cases were cited upon that occasion; the Committee paused, and insisted upon having the clerk, in whose custody it was, brought forward; he came, and proved that the books had been kept in an open room, where everybody might have access, that he had taken them to his own house to copy, and erasures and alterations appeared in them, and yet the Committee admitted them in evidence, in spite of all these irregularities, rather than suffer the petition to be defeated by a technical objection. The strict proof that is required

(*g*) *Chester*, Cor. & Dan. 72. *Bristol*, ibid. 87. *Drogheda*, ibid. 94, where the poll was received; *Limerick*, ibid. 89, where it was held not duly proved.

(*h*) 1 Geo. 4, c. 11, s. 4.

(*i*) *Ante*, p. 96.

by the other side is all but impossible; the poll-clerks are bound to deliver the books at the close of the poll to the returning-officer, or his deputy: in order, therefore, to be quite secure from alterations, it would be necessary, in all cases, to call every poll-clerk and every deputy, for they have opportunities of altering them before they come to the hands of the returning-officer. As to the other point, the town-clerk, by whomsoever he is appointed, is the officer of the corporation, and his custody is the custody of the bailiff, who is the head of the corporation.

Mr. Serjt. Merewether, in reply:

The *Limerick case* is an authority in favor of the sitting member. The statute passed as to proof of polls from Ireland, cannot apply to English cases. In the *Oxford case*, the poll was finally proved by the clerk in whose custody it had been; in the *Londonderry case*, both by the clerk of the peace and the returning-officer; and the Committees in both cases refused to receive them till they were so proved.

The Committee resolved, that further evidence is necessary to prove the poll-books.

Mr. Harrison then applied to the Committee for time to send for the town-clerk.

An adjournment, to admit of the petitioners producing the town-clerk to prove the poll, refused.

Mr. Serjeant Merewether objected to this application being complied with. The point to be considered was, whether the petitioners had been guilty of default, or not; because, if they had not, he admitted that time was usually conceded; if, however, they had been guilty of it, time was never allowed. Here, he contended, that the petitioners had full knowledge that the town-clerk had the custody of the poll-books; the very witness they had brought would have told them, that he had delivered over the books after the election to him, and they were consequently guilty of default in not pro-

ducing him. The decisions of the Committees in the *Londonderry* and *Oxford* cases, ought to have taught them that his evidence would be necessary.

Mr. Harrison:

In the *Oxford case,* time was allowed, in order to bring up the clerk to the town-clerk, who had had the custody of the poll since the election; and in the *Londonderry case,* time was also given to produce the returning-officer. The reason that the town-clerks, both in the *Oxford* and the present case, were not originally called was, that for many years the production of the poll by the returning-officers had, by common consent among the counsel, been held sufficient, on account of the inconveniences that otherwise would have resulted, in consequence of the decision by the Limerick Committee, from being obliged to call the poll-clerks in almost every case. Here there was still greater claim for indulgence than in the *Oxford case,* for in the last Montgomery Committee, the same proof of the poll as was now tendered had been received without objection. There was no such enactment as to the custody of the poll-books in boroughs, as there was in counties, but there was good ground for saying, that since the passing of the Reform Act, the returning-officer was the proper person to whom they ought to be entrusted; if so, the town-clerk, as the officer of the corporation, was his deputy for that purpose. There was no ground for contending that the recorder ought to have the care of them. Recorders might, and frequently did, reside at considerable distances from their boroughs, and the town-clerks always had the care of the corporation papers (*k*).

(*k*) The whole of this argument passed with closed doors, in a discussion in which the members of the Committee took a considerable part. The report here given of it, is extracted from the shorthand-writer's notes.

The Committee resolved, that further time be not given to the petitioners to produce additional evidence in support of the poll.

Mr. Harrison then abandoned the case on behalf of the petitioners.

The Committee then resolved, that the sitting member was duly elected, and ought to have been returned, and that neither the petition, nor the opposition to it, appeared to be frivolous or vexatious.

CASE XXVI.

BOROUGH OF COLERAINE.

The Committee was appointed on the 7th of May 1833, and consisted of the following Gentlemen:

John Hardy, Esq. M. P. for Bradford, (*Chairman*).

Samuel Irton, Esq. M. P. for West Cumberland.
Joseph S. Brotherton, Esq. M. P. for Salford.
Viscount Sandon, M. P. for Liverpool.
Sir Stephen Richard Glynne, Bart., M. P. for Flint.
Jasper Parrott, Esq. M. P. for Totness.
W. Fawkener Chetwynd, Esq. M. P. for Stafford.
(*a*) Joseph Pease, Esq. M. P. for North Durham.
W. R. Carter Chaytor, Esq. M. P. for Durham City.
Ralph Thicknesse, Esq. M. P. for Wigan.
Roderick Macleod, Esq. M.P. for Sutherland County.

Petitioner:—William Taylor Copeland, Esq. Ald.
Sitting Member:—Vice-Admiral Sir John Poo Beresford, Bart.
Counsel for the Petitioner:—Mr. Harrison, The Hon. C. E. Law and Mr. Thesiger.
Agents:—Messrs. Brundrett, Spinks & Brundrett, and Mr. Watt.
Counsel for the Petitioners defending the return (*b*):—Mr. Serjt. Merewether, Mr. Follett and Mr. Hildyard.
Counsel for the Returning-officer:—Mr. Alexander.
Agents:—Messrs. Farrers.

Statements of the petition.

THE petition stated the absence of the mayor from Coleraine on the night of Thursday, the 6th of Decem

(*a*) Mr. Pease, being a Quaker, his affirmation, instead of the oath required by the 9 Geo. 4, c. 22, was taken after some debate. See Mirror of Parliament, (7th May 1833), pp. 1654, 1655.

(*b*) Sir John P. Beresford having declined to defend his seat, on the 20th of February, the petitioners were, on the 15th of March, in accordance with the provisions of the 12th section of the 9th Geo. 4, c. 22, let in to defend the return.

ber last, when the precept for the election arrived, and that a printed notice was affixed to the door of the town-hall, as early as 9 o'clock on the following morning, announcing that the election for the borough would take place at 10 o'clock on the morning of the then following Tuesday, and "that no notice of holding such election under the hand of the said Richard Hunter, the mayor and returning-officer of the said borough, was affixed in the usual public place in such borough, four days at the least preceding the day of such election." And that, notwithstanding a written protest had been delivered by the agent for the petitioner to the mayor, in the name of the petitioner, against proceeding to hold the election without due notice, the mayor had proceeded to the election, and had returned Sir John Poo Beresford as having been duly elected a burgess for the said borough of Coleraine (*c*); "that at such election, several persons, being freemen of the said borough, and having claimed to be registered as voters for such borough, but who had been refused permission to be registered by the registering barrister, and who were entitled to be registered as voters for such borough, and to vote at such election, tendered and offered their votes in favor of the petitioner; but that Robert Hazlett, the deputy of the

That the notice for holding the election was insufficient.

That a written protest on the part of the petitioner, against holding the election without due notice, had been delivered to the mayor.

That the votes of freemen refused to be registered by the barrister, had been rejected by the deputy returning-officer, who refused to receive them as tendered for the petitioner.

(*c*) The allegations in the petition against the mayor were not proceeded upon. Instances of charges, in answer to which a returning-officer is admitted to appear by counsel, are to be found in the cases of *Great Grimsby*, *Tewkesbury* and *Colchester*, 1 Peck. pp. 77, 146, 504; *Middlesex* and *Knaresborough*, 2 Peck. pp. 11, 282. In the *Colchester case*, and in that of *Nottingham*, 1 Peck. Pref. 46, however, it was decided, that though admitted to answer the charges against him, the returning-officer was not to take part in the appointment of the Committee. This is left to the discretion of the House, by the 9th Geo. 4, c. 22, s. 36. In the *Great Grimsby case*, Minutes, 25th Feb. 1808, the Committee decided, "that the counsel for the returning-officer be not permitted to make any preliminary objection against the counsel for the petitioner proceeding to open his case."

returning-officer, rejected such votes, and declined to receive them as tendered votes for the petitioner;"

That by reason of such rejection, and by the admission of illegal votes, the numbers were equal, and the mayor gave the casting vote to the sitting member.

"that by means of the rejection of such votes, and by the admission of illegal votes for Sir John P. Beresford, the number of votes at the close of the poll given for the said Sir John Beresford and the petitioner was equal, and the mayor thereupon gave his casting voice in favor of the said Sir John P. Beresford, who thereby obtained a colorable majority over the petitioner of one vote."

It prayed, that the sitting member might be declared not duly elected, and the substitution of the petitioner's name in the return, or that the election might be declared void.

The case for the petitioner, as opened by Mr. Harrison, involved the right to vote of certain persons, members of a yeomanry corps in Ireland, who, in the year 1797, were, in acknowledgment of their services, elected freemen of the corporation, but who were not sworn in until October 1831, having in the month of May previous paid a stamp duty of 5*s.*, with a penalty of the same amount, under the Indemnity Act, as the duty on their admissions. This stamp duty had been paid, and certificates of its payment given, after the stamp distributor had consulted with the Attorney-general for Ireland, for the purpose of ascertaining the duty to which these freemen were liable on their admission. Their votes were entered as tendered at an election in 1830, which was not followed by a petition, because a dissolution of Parliament was expected, but on a petition after an election in 1831, at which these freemen had tendered their votes, Mr. Alderman Copeland had been seated.

Eventually, the question of the general right of voting in the borough was raised, and statements of that right were put in by the parties.

The statement by the petitioner was in these terms: "That all the freemen of the corporation of Coleraine were, previously to the Irish Reform Act, legally entitled to vote in the election of members to serve in Parliament for the borough aforesaid, and that since the said Act, all the said freemen, (subject to the provisions of the Act of the 1st & 2d Will. 4, c. 88, as to residence and registry), and also all other persons qualified under the said Act, are now legally entitled to vote at the election of members for the said borough." Statements of the right of voting.

The statement put in on behalf of the defending petitioners was as follows: "That the right of voting in the borough of Coleraine, before the passing of the Irish Reform Act, was in the mayor, 12 aldermen, and 24 burgesses only."

An office copy of the charter granted by King James the 1st, in the 11th year of his reign, to the town of Coleraine, from the Rolls-office in Dublin, and also a translation of it by Mr. Schultes, were produced and proved. That charter, after reciting the intention of the king, "to recall the province of Ulster from superstition, *rebellion*, calamity and poverty, which had heretofore horribly raged therein, to religion, *obedience*, strength and prosperity," and reciting that the mayor, commonalty and citizens of London, had undertaken a considerable part of the plantation in Ulster, and were making progress therein, proceeded to constitute Coleraine a free town, and to declare the extent of its jurisdiction and liberty to be three Irish miles, measured every way, from the middle of the town. It contained subsequently, amongst many other clauses, three relating respectively to the incorporation of the town, to the election of members of Parliament, and to the creation of guilds, which the argument upon them renders it necessary to state somewhat fully. The charter of 11th James 1.

The incorporation clause.

"And we do will, grant, appoint, ordain and create, that all inhabitants of the aforesaid town of Coleraine, and all inhabitants within the jurisdiction and liberty of the same town of Coleraine, *and those who hereafter shall be* inhabitants of the town aforesaid, or inhabitants within the jurisdiction and liberty of the same town of Coleraine, and their successors from henceforth for ever, shall and may be, by force of these presents, a new body corporate and politic, in deed, fact and name, by the name of The mayor and aldermen, and burgesses, of the town of Coleraine, within the province of Ulster, in the kingdom of Ireland; and them by the name of the mayor, aldermen and burgesses of the town of Coleraine, within the province of Ulster, in the kingdom of Ireland, a new body corporate and politic, in deed, fact and name, really and fully, for us, our heirs and successors, do erect, make, ordain, constitute, create and declare, by these presents. And that by the same name they shall have perpetual succession;" with the usual powers of holding lands, and of pleading and being impleaded by that name, and of having a common seal.

The power to send burgesses to Parliament.

"And further, of our more abundant special grace, we will, and by these presents, for us, our heirs and successors, do grant to the aforesaid mayor, aldermen and burgesses of the town of Coleraine aforesaid, and their successors, and also by these presents, we do ordain and establish for ever in future times, that there be, and shall be, in the said town of Coleraine, two burgesses of the Parliament of us, our heirs and successors; and that the mayor, aldermen and burgesses of the town aforesaid, and their successors, by virtue of any precept, mandate or process, upon the writ of us, our heirs and successors, for the election of the burgesses of the Parliament in that behalf duly directed, may and shall have power, authority and faculty to choose and nominate two of the more discreet and sufficient *freemen* of

the said town of Coleraine for the time being, to become burgesses of the Parliament of us, our heirs and successors, for the same town and liberty of the same; and the same burgesses so elected, at the costs and charges of the *said* mayor, aldermen and burgesses of the town of Coleraine aforesaid, and their successors *for the time being*, to send to the Parliament of us, our heirs and successors, wheresoever it shall be then holden, in the same manner and form as in other places, cities, boroughs or towns, of our realm of Ireland, is used and accustomed; which said burgesses, so elected and nominated, we will to be present and continue at the Parliament of us, our heirs and successors, at the costs and charges of the *said* mayor, aldermen and burgesses of the town aforesaid *for the time being*, during the time that such Parliament shall happen to be holden, in the like manner and form as other burgesses for the Parliament, for any other places, cities, boroughs or towns, within our realm of Ireland, do or have accustomed, or ought to do."

The power to erect guilds and fraternities.

"And further, &c., for us, our heirs and successors, we do grant to the aforesaid mayor, aldermen and burgesses of the town of Coleraine aforesaid, and their successors, that for the greater increase of all and all manner of arts, mysteries and manual occupations whatsoever, within the aforesaid town of Coleraine, the liberty and precincts of the same, and for reducing the same into better order and perfection, such and so many of the mayor, aldermen and burgesses, *and other freemen* of the same town, and their successors, as do now use and exercise, or shall hereafter use or exercise, any one art, mystery, or manual occupation, be from time to time for ever hereafter separated and divided by the mayor and aldermen of the town aforesaid for the time being, or the greater part of them, into separate companies, guilds or fraternities, of the same art."

The poll-book of 1831 was produced (*d*), and the following resolution of the last Coleraine Committee was read, by consent, from the Minutes (*e*). Resolved, "that all the freemen of the corporation of Coleraine are legally entitled to vote in the election of members to serve in Parliament for the town aforesaid." The printed copy of the return of the commissioners appointed previously to the Reform Act, indorsed, "Returns relating to the corporation of the borough of Coleraine, 18th April 1832," was then put in.

Mr. John Boyd, the chamberlain of Coleraine, produced the acts of the corporation, commencing 24th of December 1792, and containing the corporation proceedings until the present time. The following extract from the book, dated Monday, 2d October 1797, was then read: "At a court of common council, held this day in the town-hall of Coleraine, pursuant to public notice for that purpose, the Rev. Robert Haslett elected mayor, and E. A. M'Naghten, an alderman. Present, James Thompson, mayor, (and 20 others of the corporation, named in the book); the Right Hon. Sir John Beresford proposed that the thanks of this corporation be given to Marcus Hill and Hugh Lyle, Esqrs., and the corps under their command, for their spirited exertions, by which the peace of this town and neighbourhood has been so perfectly preserved, and for the attachment they have manifested to their King and Constitution; and that such of the said corps as have not already been made freemen of this corporation be made freemen thereof, viz: Lieut. Mark Ker O'Neill, &c. (111 names, among which are those of Arthur Long, and 13 others, on whose right to vote the Committee

(*d*) See *post*. p. 508.

(*e*) *Coleraine*, Minutes, 4th August 1831. The first resolution submitted to the Committee was the following: "That the right of election of members to serve in Parliament for the town of Coleraine is vested in the mayor, 12 aldermen and 24 burgesses, or capital burgesses of the said borough, exclusively." It was carried in the negative.

ultimately decided); and the question being put, they were *severally* duly and unanimously elected freemen of this corporation. (signed) by order,

Connolly M'Causland, Chamberlain."

From the same book the following entries were read: "12th August 1830. At a court of common-council, held this day, Sir John William Head Brydges was admitted a freeman of this corporation. The petitions of divers persons claiming to be freemen of this corporation being presented, resolved, that the same be taken into consideration;" and a resolution, 1st Oct. 1830, "that the said claims are inadmissible."

Mr. Boyd, on his cross-examination, stated, that in 1822, he was made a burgess of the corporation, which consisted of a mayor, aldermen and 24 burgesses; that there were freemen, some of whom had been elected in 1831; that he had been present at three or four elections, and had never known any person either to vote, or claim to vote as a freeman, except in 1830, and at subsequent elections. When re-examined, he stated, that there was no contest at the elections of which he had spoken; that Sir James Robinson Bryce and Mr. Richardson, who had resigned their alderman's gowns, had voted for Sir John Beresford, at the last election.

The register was then put in, and from it the name of Thomas Lundy was read, with the decision of the registering barrister, that he was rejected because evidence was adduced that the stamp duty on his admission was insufficient, and because he was an honorary freeman, admitted since the 30th March 1831. The names of Arthur Long, and 16 others, rejected on the same ground, were then read. It was proved, that the whole 17 were inhabitants of Coleraine or of the liberty; that a stamp duty of 5*s*., with a penalty of the same amount, had been paid by each. Fourteen of these freemen had tendered for the petitioner at the election,

but having no certificates, the deputy returning-officer refused to receive their votes. The following entries were also read from the register: "Henry Richardson, claiming by corporate right as a burgess of Coleraine." "John Moore, in right of his being an alderman." "Henry O'Hara, as a resident burgess." "Thomas Bennett, burgess of the borough of Coleraine." "Samuel Knox, resident freeman (*f*)." "Sir James Robinson Bryce, Bart., resident freeman." "The Rev. Thomas Richardson, clerk, resident freeman." "Richard Hunter, Esq., (the mayor), resident freeman."

A witness, (James Gribbon), then stated, that he was present at the election on the 12th of August 1830, at which Mr. Alderman Thorp and Sir J. Brydges were candidates; that he remembered a number of persons then making application for admission to their freedom; in doing so, they expressed their willingness to do what was necessary; that it was suggested to the freemen of 1797, that they should make their claim to vote, which they did, and two of them proposed and seconded Mr. Alderman Thorp; that the mayor directed the names to be taken down as tendered votes; that the select body voted for Sir J. Brydges, and the freemen for Mr. Alderman Thorp; that at a meeting of the common-council held previously, on the same day, the freemen of 1797 claimed as freemen to take part in the proceedings, and to assist in filling up the vacancies at the election of burgesses; that the mayor, chamberlain and others, said they had no right to be present, one of the aldermen, (Hill), adding, that "if they did not leave the hall the police must be sent for," upon which they had retired, on an understanding that they should be admitted before the proceedings closed; that at the

(*f*) This was stated afterwards to have been a mistake made by the clerk to Mr. Gregg, (C. P for the county) in copying. In the barrister's list the qualification appeared as "householder."

second meeting, on the same day, the witness, "as agent for the whole of the freemen of 1797," assisted by George Macloghlin and Thomas Lundy, two of that class, claimed the right as freemen to vote for a burgess to serve in Parliament; that two inhabitant householders of Coleraine also claimed to exercise that right as freemen, though not in the books. It also appeared, that the question of the right of admission on the register of the freemen of 1797 was argued for two days before the barrister (*g*), who took time to consider, and then decided against the whole class, but no evidence of due diligence in August 1830 was adduced; that instructions had been given, previously to the swearing of the freemen in October 1831, that they should be sworn under protest. An extract from the charter of Londonderry was read, by consent, from the printed account of the proceedings of the Irish Society, by which it appeared, that "all citizens and inhabitants of the city, and they who hereafter shall be citizens and inhabitants of the said city, and their successors," were incorporated "by the name of the mayor, commonalty and citizens of the city of Londonderry." It was proved by the chamberlain of Londonderry, (Mr. Gregg,) who had been present at various elections there, that the mayor, aldermen, burgesses and *freemen*, had always voted, and not the select body only. Both Londonderry and Coleraine were shown by the charter to be subject to the same control by the Irish Society over their by-laws.

On the part of the petitioners defending the seat, some writs and returns for the years 1661, 1666, 1685, 1713 and 1715, and from thence down to the Union, were put in. The return for the year 1661 was found to be made by the mayor, aldermen, burgesses and *freemen*,

(*g*) The reporters have been favored with a note of the arguments by Henry Martley, Esq., one of the counsel engaged. The case was very fully argued.

though the precept was directed to the mayor, aldermen and burgesses. In the other cases, the returns were by the mayor, aldermen and burgesses. Petitions presented in the years 1713, 1727 and 1728, were read from the journals of the Irish House of Commons, in which the election was described to be "in the mayor, aldermen and burgesses." A letter was produced, and admitted to have been received from Mr. Farrer, requesting Mr. Alderman Copeland's agent to appear at the assizes, at the discussion of an appeal from the barrister's decision on three of the yeomanry freemen's cases, those of George Macfadden, James Ewing and William Jackson. The evidence of Mr. M'Naghten, an alderman of Coleraine, and a 10 *l.* householder, that he had never heard, until the year 1831, of any person claiming to vote, except the members of the select body, was received (*h*). On cross-examination, he stated, that he was one of the yeomanry freemen, but had never acted as a freeman: he had been made burgess, and elected alderman in October 1831, and had been sworn in on the same day as the other freemen of 1797.

Merewether, Serjt., and Mr. Follett, for the petitioners defending the seat:

The grounds on which the right of Arthur Long is said to be founded are, 1st, that freemen of Coleraine have a right to vote; 2d, that the yeomanry freemen are entitled to vote, because they were admitted in 1797; 3dly, that they have used due diligence in asserting their right, and 4thly, that the question has already been decided upon precisely the same evidence. In support of the first position, the charter has been

(*h*) Mr. Harrison at first objected to the evidence of Mr. M'Naghten on two grounds; 1st, that of hearsay; 2d, that the witness was an alderman, and therefore interested in restricting the right of election; see, however, *à contrà*, 1 Dougl. 260; 2 Dougl. 273-4; 4 Dougl. 60; and 3 Lud. 571; but he afterwards waived the objections.

referred to, and the attention of the Committee directed to the words of incorporation, by which not only all the inhabitants of the town, and within the liberty and jurisdiction of the same, were incorporated, but also all who thereafter should be inhabitants of the town, or within its jurisdiction or liberty, and their successors from thenceforth for ever. If, however, all the inhabitants were to have the right of voting at the election of members of Parliament, it would be a claim quite inconsistent with that set up by some *quâ* freemen. The cases, too, of *Portsmouth* (*i*), *West Looe* (*k*) and *Dungannon* (*l*), are directly opposed to such a construction. The words, "all who shall hereafter be inhabitants of the town," were among the many pleonastic expressions which frequently occur in charters. On a more accurate reference, however, to the clauses of this charter (*m*), it would be seen, that a mayor, aldermen and burgesses, freemen and inhabitants, were all recognised in it as separate classes. The mayor, 12 aldermen, a chamberlain, and 24 burgesses, were appointed by name, and they were to form the common-council, and to make bye-laws; and it is reasonable to suppose, that it was the intention of the King to grant the right of sending members to Parliament to those whom he had entrusted in other respects with the governing power, especially as it is well known, that the principal object

(*i*) 76 Journ. 346. There the right was alleged to be "in the mayor, aldermen and burgesses, being resident within the said borough, and the limits and liberties thereof;" it was found to be "in the mayor, aldermen and burgesses of the said borough only."

(*k*) 3 B. & C. 677, and printed case before the Committee in 1823, by Mr. Serjt. Marsewether.

(*l*) Hob. 14, 12 Co. Rep. 120. Hudson on the Elective Franchise, p. 41.

(*m*) Several clauses were referred to, relating to the payment of scot and lot, and of charges for paving the streets, the forfeiture of goods sold by retail by persons "not of the freedom of the town of Coleraine," brokers, common hosts, prisage of goods by purveyors, &c.

in granting these charters, was to strengthen the English government by the aid of the bodies created by them. The burgesses are required to take the oaths of allegiance and supremacy, which all common-councilmen must do; *Rex* v. *Love* (*n*); the office being regarded as one required to be exercised with fidelity; and it is provided, that they might be elected either from "the freemen of the town, or the inhabitants within the liberty of the same." The privileges of freemen are then marked out; and it is provided, that they might carry on trade (*o*), obtain exemption from toll, wharfage, &c. (*p*); and that all of them being willing to enjoy the liberties free customs of the town, should "be in lot and scot, and partake of all the charges for maintaining the state of the same town, and of the liberty of the same (*q*), *according to the oaths which they made when they were admitted to their freedom;* and he who will not do this shall lose his freedom." The taking the oath, therefore, and admission, were treated as contemporaneous. The corporation being thus divided into the mayor, aldermen and burgesses, who composed the common-council, and the freemen, who, though entitled to certain privileges, were not appointed to take any share in the government of the town, the clause as to the election of members of Parliament distinctly provides that the mayor, aldermen and burgesses, shall have power, authority and faculty, to choose and nominate two of the most sufficient freemen to that office. With reference to the preceding parts of the charter, it is clear that the select body was only intended by this grant to the mayor, aldermen and burgesses; for the word "aldermen" need not have been introduced, unless that body were meant; "mayor and burgesses," would

(*n*) 12 Mod. 601.

(*o*) Proceedings of the Irish Society, p. 163.

(*p*) Ibid. 162; this exemption extends to the whole of Ireland.

(*q*) "*Pro statu ville ejusdem, et pro libertate ejusdem.*"

have been sufficient, if it had been intended to give the right to all the corporation. It could not be contended that "burgesses" meant "freemen," for the word occurred in the clause in question, which provides that the persons to be elected members should be "freemen;" and this was further evidenced by the clause relating to the formation of guilds, where the words were "mayor, aldermen, burgesses and *other freemen.*" In the charter of Londonderry, where freemen had been always accustomed to vote, it was observable, that the words of incorporation, and in the clause of election, were, "the mayor and commonalty and citizens," which word "commonalty" did not occur in the incorporation of Coleraine. In that city there were also recognized the inchoate rights of freemen by birth, marriage and servitude; the 'prentice boys of Derry were well known to be entitled to a share of the electoral franchise.

When the persons were named who were to pay the costs of returning the members for Coleraine, the words "for the time being" were used, as also in the clause appointing the first 24 burgesses, a mode of expression almost universally applied to a select body, whose members come in by succession as vacancies occur. It was right that the select body should pay, for they had the property vested in them, as had been decided in a late case by the Court of King's Bench (*r*), which affirmed the acts of a common-council of Queenborough, who had assumed to themselves the disposal of the corporation property.—[*Chairman*: The word "burgesses" is used in different ways in different clauses; the select body are called "common-council," where it is intended they shall exercise exclusive rights; in other cases, the grant is to the whole corporation, as in the clauses relating to

(*r*) See on this subject the *Mayor, &c. of Colchester* v. *Lowten*, 1 Ves. & Bea. 226; and the Minutes of Evidence before the Committee on the Northampton corporation, Parl. Papers for 1827, vol. 4, pp. 27, 28.

the oath to be taken by the mayor, aldermen and burgesses, to the election of a burgess on a vacancy, and to the grant of freedom. In the clause giving the right of election, the words are "*the said* mayor, aldermen and burgesses *of the town*," not "*the said* mayor, aldermen and burgesses." This appearing to be the case, was it not fair to adopt this construction, that the body should be called "common-council," when it was intended to confine the right to that body?]—The cases of *Dungannon* (*s*), *West Looe* (*t*) and *Portsmouth* (*u*), were opposed to the conclusion, that by the charter the inhabitants generally were incorporated (*x*). In Portsmouth, where there were 60,000 inhabitants, the charter recited, that the inhabitants had enjoyed certain rights, and then granted certain coal dues. These dues or tolls had always been taken by the select body, and a question having been raised by an inhabitant as to his liability to pay them, it was decided against him. On similar grounds, a Committee of the House had decided against the right of voting of the inhabitants in the case of the borough of Truro (*y*), the question of tolls there having also been the subject of discussion in the Court of Common Pleas (*z*). The decision of a Committee in the *Rye case* (*a*) in favor

(*s*) Hudson on the Elective Franchise in Ireland, p. 41.

(*t*) 3 B. & C. 677.

(*u*) *Ubi Supra*.

(*x*) The corporation of Southwold, in Suffolk, consists of the inhabitants legally settled, without any form of election or admission.

(*y*) Minutes, 17th Feb. 1831. 86 Journ. 265.

(*z*) 8 Bing. 275. The *Mayor and Burgesses of Truro* v. *Reynalds*.

(*a*) 85 Journ. 429; 86 Journ. 190. The appeal Committee found, "that the right of election for the borough of Rye is only in the mayor, jurats, and in the freemen inhabiting in the said town and port, and paying scot and lot, duly admitted and sworn: that it appears that by the ancient usages of the town and port, there are three ways of making freemen. 1. The eldest sons of freemen, born after their fathers are free, have a right at 21 years of age, and may demand their freedom. 2. Every mayor may make one *gratis*, during his mayoralty. 3. Any person may be made free at an assembly of the mayor, jurats and freemen: that the usage of the port is

of the right of inhabitants, had been reversed on appeal, which occasioned the abandonment of most of the other cases which were agitated at that time (*b*); and in the *Carlow case* (*c*), the Committee had even divided on the question of whether the petition should be pronounced frivolous and vexatious.

Charters in general are capable of this interpretation, that when the King is disposed to constitute a local government for the benefit of a particular town, the intended benefit to the inhabitants is recited, and a grant is made to them, but for the purpose of securing to them the perpetual enjoyment of the proposed advantages, a body is constituted having perpetual succession; for, except in the solitary instance of a grant of land to inhabitants at a rent, which has been held to be a case of *quasi* incorporation (*d*), "that the King may not be defrauded of his rent," no grant to an undefined body can be supported. According to the actual wording of the clause in question, the members of the select body would act in their individual capacities, as they did in the election of a coroner, and whoever was present might elect the members; but if, as had been suggested, the words "common-council" had occurred in the clause in question, the election of a member of Parliament would

that if any person so put up to be made free of the said town be rejected, he cannot be put up again in the same year." The first Committee found, that there was a custom in Rye, to admit every stranger who had inhabited and dwelt there for a year and a day, "who had occupied some honest craft," and "was of good guiding and conversation, and desired the franchise."

(*b*) There were some other decisions on the right of voting about the same time. In the *Wigan case*, 86 Journ. 273, the right was alleged to be "in inhabitant householders paying scot and lot," but found to be "in the in-burgesses, paying scot and lot, and the honorary burgesses duly admitted and sworn." See also the cases of *Calne*, ibid. 135; *Marlborough*, ibid. 137; and *St. Mawes*, ibid. 180.

(*c*) 86 Journ. 273. There the right of election was alleged "to be in freemen or burgesses;" the Committee found, that it was "in the sovereign and free burgesses, and that freemen have no voice or right to a vote in any such election."

(*d*) Dyer, 100; and see Cro. Eliz. 35, 363, and 4 Inst. 297.

have been rendered a corporate act, as was the election of a mayor, and could then only have taken place at a corporate meeting duly assembled. It was most improbable, too, that the King intended to give to Coleraine a right of election, amounting almost to universal suffrage.

Next as to usage. Usage is always to be regarded, where the words of a charter are doubtful, as some of the passages here may be admitted to be; *The King* v. *Sligo* (*d*), judgment of the chief justice. In *The King* v. *Chester* (*e*), though there had been two contrary precedents, a century of usage was held sufficient to govern the construction of the charter. In the case before the Committee, the usage was carried still further back, and, with one single exception, it had been shown that the mayor, aldermen and burgesses invariably returned the members. This part of the case was not before the former Committee. The return in the 15 Charles 1, 1639, was by the mayor, aldermen and burgesses, and so from 1666 down to the present time, the returns were signed by members of the select body alone. Only one exception could be found to this general rule, in the return of the 5th April 1661, which was by the mayor, aldermen, burgesses and *freemen*, a form quite unnecessary if "burgess" included "freemen," and capable of explanation by a reference to history, which informed us, that shortly before this period the right of voting in England had been altered by Cromwell, and vested in inhabitant householders, and that in the year 1661, the Act for purging corporations passed, and that every species of violence occurred in Ireland unrestrained by law (*f*). There had been two or three contested elections, and yet the claim now made had never been raised. The

(*d*) 2 Fox & Smith's Reports, 96.

(*e*) 1 M. & S. 101.

(*f*) Leland's History of Ireland, vol. 3, p. 409.

petition which was presented in 1713 (*g*), complained of the undue election of aldermen and burgesses, but it recognised the right of election of members as in the select body. In the petition of 1727, the right of election was stated (*h*) to be vested in the mayor, aldermen and burgesses, though it was the interest of the petitioner, Mr. Jackson, to have disputed that right; and the petition (*i*) presented in 1728, contained the same statement. On the clear construction, then, of the charter, and on the usage since it was granted, freemen had no right to vote at elections, but the right to return members was in the mayor, aldermen and burgesses.

2. The next objection to the vote of Arthur Long was, that he was not legally elected, inasmuch as the whole body of yeomanry was proposed in one vote, and voted for together, a mode of election which was contrary to the law both in England and Ireland: *Rex* v. *Monday* (*k*), *Rex* v. *Player* (*l*), *Kilkenny case*, in 1778 (*m*), *Wexford case*, in 1830 (*n*).

(*g*) Journals of the Irish House of Commons, 4th Dec. 1713, vol. 2, p. 754, report on 23d December, ibid. 775.

(*h*) Journals of the Irish House of Commons, 6th Dec. 1727, vol. 3, p. 478. In that case one of the sheriffs had made out a precept directed to the mayor only; the other sheriff made out another precept, directed to the mayor, aldermen and burgesses. In the same page is a petition of the *majority* of the aldermen and burgesses against the mayor, for not proceeding in due time to the election of a burgess to serve in Parliament. The mayor was committed to the custody of the Serjeant at Arms.

(*i*) Ibid, 19th March 1728, p. 553. Mr. Thesiger here objected, that the Irish Journals were not evidence. Mr. Serjeant Merewether submitted, that the present Parliament being only the united Parliament of the two countries, and therefore a continuation of the Parliament of Ireland, the Journals were admissible. The objection was not pressed, so as to obtain a decision of the Committee upon it. In case of impeachment, the printed journals are not evidence; Lord Melville's case, How. St. Tr. vol. 29, p. 683; but sworn copies of entries are; *Rex* v. *Lord George Gordon*, 2 Dougl. 590.

(*k*) Cowper, 530, *Portsmouth case*.

(*l*) 2 B. & A., 707, *Gloucester case*.

(*m*) Hudson on the Elective Franchise in Ireland, p. 125.

(*n*) Ibid, p. 432.

3. No application had been made for admission from 1797 to 1830; this, in any other proceeding, and before any other court than the present, would have been found by the other side an insuperable objection to their case; "*Lex vigilantibus non dormientibus.*" Such neglect as this had been held to operate as a waiver of the right. In *Rex* v. *Jordan* (*o*), the burgess had not been sworn in till 25 years after his election. In the judgment of Lord Hardwicke, it is said, that "non-acceptance for so many years, is sufficient evidence of refusal," and that a *mandamus* for admission would not be granted. That the Legislature did not favor such claims, was plain from the Irish Act, 33 Geo. 3, c. 38, which, in section 3, recites, "that whereas, by collusion with persons having the custody of corporation-books, divers persons have obtained their names to be entered therein as burgesses or freemen, as if they had been duly elected, and such persons have never sued forth any writ of *mandamus*, or otherwise applied to be sworn or admitted burgesses or freemen," and enacts, "that no writ of *mandamus* shall issue for the admission of such burgess or freemen, unless within seven years after the entry of his election." This statute then having been passed four years before the election of these freemen, it was quite clear that it took away from them the right of admission.

4. It was necessary for a person who claimed to vote as a freeman, that his admission should have a proper stamp; *Wexford case* (*p*). The voter here was not in that situation. The stamp duty on the admission of freemen in 1797 was 5*s.*; it was payable on the entry of admission, not on the election of a freeman, who need only procure his entry of admission to be stamped when he wished to prove his right. By the 56 Geo. 3, c. 56, the old Acts were repealed, and the duty was raised to 1*l.* on admissions by reason of birth, servi-

(*o*) Cases temp. Hardw. 255.

(*p*) Hudson on the Elective Franchise, 431, 432.

tude or marriage, and to 3 *l.* on all others. This last, therefore, was the proper stamp; but the voter, with the view of rendering his claim consistent, had caused a 5 *s.* stamp to be placed on his admission. The Indemnity Act did not enable a party to put on a stamp of a lower denomination, than that required by the law in force at the time of affixing the stamp.

5. Arthur Long was excluded by the express words of the proviso in the 9th section of the Irish Reform Act. The words were, "that no persons who, since the 18th day of March 1831, have been, or hereafter shall be, *admitted* as honorary freemen, shall be entitled to vote or register as freemen under this Act." These words differed materially from those in the 35 Geo. 3, c. 29, s. 29, and 4 Geo. 4, c. 55, s. 32 (*q*); and the Reform Act being subsequent to these enactments, the conclusion was irresistible, that the difference was intentional. The claimant, then, was admitted in October 1831, at which time he took the oath, before which his admission to his office of a freeman was not consummated; *Williams* v. *Evans* (*r*); Willcock on Municipal Corporations (*s*); and he was an honorary freeman, for the grant of freedom was stated to be a compliment to the yeomanry corps, of which he was a member.

The two last points had been decided upon an actual reference to the judges in Ireland. Mr. Justice Moore, before whom the two questions were raised at the Derry Assizes, had stated a case for the opinion of the 12 judges, who had concurred in opinion on the last point, and the opinions of 11 judges against one had been

(*q*) In the first of these Acts, the words are, "unless he shall have been *admitted* to his freedom, *or* his freedom shall have been *granted to him*, six calendar months at least before the teste of the writ;" in the other, "unless he shall have been *elected* or *admitted* to his freedom, or his freedom shall have been *granted to him*, six calendar months, &c."

(*r*) 8 T. R. 246.

(*s*) Sections 555, 558, 575, pp. 219, 220, 226; and see Willcock, sections 579, 581, 582, p. 228.

given in favor of the insufficiency of the stamp. That learned judge had been summoned (*t*), and in the presence of the gentleman sent to serve the summons, had prepared a certificate of the judges' opinion, at the same time stating he was engaged on circuit. There was no substantial difference between these cases adjudicated on, and any of the rest, all of them having been admitted in October 1831, and the same stamp duty having been paid on each admission. It had, indeed, been insinuated, that the discussion was a collusive one, but he believed that no question was ever argued with greater ability. The counsel who attended at the election on behalf of Mr. Alderman Copeland, argued the question before the judge.

Mr. Harrison and the Hon. C. E. Law, for Mr. Alderman Copeland:

The charters of Coleraine and Londonderry are peculiarly worded, and were granted under peculiar circumstances, to explain which it is necessary to refer back to the history of the time at which they bear date. No other charters can, indeed, be found, that bear any similarity to them; and the *Carlow* and the other cases, to the abandonment of which it is said that the decision of the second Committee in the *Rye case* led, have no application to the present, because the language of the charters in them, as well as the period at which they were granted, materially differed from that of Coleraine.

In 1608 or 1609 a large portion of the lands in Ulster was forfeited to the Crown; the Ministers of that day thought it advisable to colonize, or, in the phraseology of the time, to plant, that province with English Protestants (*u*), and they were much assisted in carrying

(*t*) When the application was made to the Speaker for a summons, he expressed his doubts of the propriety of summoning a Judge, having never done so on any previous occasion.

(*u*) In Harris's Hibernica, p. 105, will be found "the project for the division and plantation of the escheated lands in six several counties of the

their scheme into execution by the city of London, and from thence the greatest part of the colonists was procured. This project continued to be pursued until the year 1613, when the present charter of Coleraine was granted, and is, indeed, expressly mentioned in the commencement of it. Under these circumstances, one of the objects of the charter was evidently to gratify the emigrants, by giving (as far as it could be done) to every one coming to Coleraine, the advantages which he had possessed in London. The recorder was to be an Englishman; the court of record, and the mode of choosing juries, to be similar to what then existed in London; the town-clerk to be chosen in the same manner as in London, and the officers of the corporation were placed under the control of the Irish Society, which was nominated by the common council of London. Every clause thus showed the close connexion with the city of London, established by its provisions. Would it then have been an encouragement to persons to colonize, that they should leave a place where the right of election of members of Parliament was vested in a large body, to go to one where it would be vested in 20 or 30 persons only? (*x*) Surely if there had been any inten-

province of Ulster, viz. Tyrone, Coleraine, Donegall, Fermanagh, Armagh and Cavan," which was probably copied from the Harleian MSS. Vol. iii, No. 7009, p. 63. This project, as to the county of Coleraine, provides for an allotment of a certain portion of lands "to two corporate towns or boroughs to be erected, one at Limavaddy and the other at Dungevin, which are to have reasonable liberties, and to send burgesses to the Parliament, and to hold their lands in fee-farm." In like manner, in Tyrone, it was provided, that there should be "five corporate towns or boroughs, with markets, fairs and other reasonable liberties, and with power to send burgesses to the Parliament: 1, at Dungannon; 2, at Clogher; 3, at Armagh; 4, at Loughenisolin; 5, at Mountjoy; and that there be a *levy* or *press* of tradesmen and artificers out of England to people those towns." See *Leland's History of Ireland*, Vol. ii. p. 432, for a further account of the King's proceedings with reference to these plantations.

(*x*) In the Harleian MSS., No. 292, p. 175, with the date of 1609, will be found "Articles agreed upon, the 28th of January, between the Right

tion to give that right to the select body, such intention would have been stated; for the select body was very frequently referred to in the charter. Had the Crown proposed originally to limit the corporation, it would have been difficult to have procured a sufficient number of Protestants to inhabit the town; but such never could have been at that time the intention of the Crown, whose wish it obviously was, that as many Protestants as possible should be procured as colonists, and if that was the case, what objection could there be to the extent of the corporation? The fear of giving political power to Papists, which may have led to the restriction of the corporation in other charters, could not operate here, where the population was to be composed of Protestant emigrants.

We do not contend that inhabitants *quâ* inhabitants are entitled to vote; all that we urge is, that they have a right to demand their freedom, which is quite consistent with the law established in England. It never has been disputed, that when the King grants a charter

Honourable the Lords of His Majesty's most honourable Privy Council, on the King's Majesty's behalf, on the one part, and the committee appointed by act of common council, on the behalf of the mayor and commonalty of the city of London, on the other part, concerning a plantation in part of the province of Ulster." These articles are 27 in number, and it is worthy of observation, that in no one of them is there any mention made of the privilege of sending members to Parliament. The number of houses to be built by the city at Londonderry is fixed at 200, and room was to be left for 300 more; and at Coleraine 100 houses, with room for 200 more. In the 27th article it is provided, "that the city shall, with all speed, set forwards the said plantation, in such sort as that there be 60 houses built in *the* Derry, and 40 houses at Coleraine, by the 1st of November next following, with convenient fortifications, and the rest of the houses with the fortifications, to be built and perfected by the 1st of November, which shall be in the year of our Lord 1611." How little this last article seems to have been attended to, may be judged of by the survey of Nicholas Pynnar and others, acting under a commission from the Crown, which is given at length in Harris's Hibernica, and from which it appears, that in 1619 there were only 92 houses and 102 families in Londonderry city, and not room for 100 more houses, "unless they will make them as little as the first, and name each room for a house."

to inhabitants, all the existing inhabitants may claim admission, although afterwards the corporation must be perpetuated by election. In the present case the charter contains a grant, not only to those who were inhabitants at the time of its date, but also to all who should thereafter be inhabitants. What can the meaning be of this grant to persons who shall hereafter be inhabitants, except that they should have precisely the same right to demand to be enrolled members of the corporate body, as the inhabitants at the time the charter was granted had and were entitled to? If this, then, be, as it certainly is, the true construction of the charter, every inhabitant at this present moment is entitled to be made a freeman, and the corporation are bound to admit them to their freedom whenever they demand it; for there is no power of election given to them which imports a power of exclusion, as was given to the corporation in the case of *The King* v. *Sligo* (y). These 14 persons, of whom Arthur Long is one, ought not to be considered, therefore, as honorary freemen, for they are inhabitants, and consequently entitled to their freedom, independently of the corporation vote of 1797.

In the charter, with reference to local circumstances and to municipal government, the common-council are continually mentioned, as contradistinguished from the corporation at large. The power to inflict penalties, to commit to prison, and the assize of bread, are given to the select body; the fines and the goods of felons are to be for the use of the whole corporation. In almost all the clauses the privileges are granted to the general body of the corporation; the carrying into execution the corporate duties is imposed on the select body. The grant of the right of sending burgesses to Parliament is to the body at large, by its corporate name of the mayor, aldermen and burgesses, and there ought to be very

(y) 2 Fox & Smith's Reports, 96.

strong words (which are not to be found) to take away from the whole body what is thus given to it, and vest it in a particular part of it. The Londonderry charter is nearly in the same terms as the Coleraine; the only difference between them, indeed, arises from Londonderry having been created a city, and it has been proved that all the freemen there exercise the right to vote. The argument which has been raised on the other side, from the expressions in this clause which direct that the burgesses should be sent to Parliament, "at the costs and charges of the mayor, aldermen and burgesses of the town of Coleraine aforesaid for the time being," can be easily answered. In the first place, it is clear, from the introduction of the words, "of the town of Coleraine," that it was intended that the cost and charges should be those of the whole corporate body by their corporate name; but supposing that the words referred only to the select body, the sound inference would be, that they who held the purse of the corporation for the general benefit of all the members of it, should defray the expense of maintaining members for the common good of the town. The revenue arising from the fines and goods of felons, which were granted to the whole corporate body, was thus to be administered by the select body for the general good of all its members. It was impossible, by any fixed construction, to contend, that the words in the clause in question gave the exclusive right of election of members to the select body.—[Mr. Pease here referred to the clause providing for 24 burgesses (*z*), and observed, by the roll it would appear that persons were sworn in "freemen and burgesses."—Mr. Hildyard called the attention of the Committee to the clause nominating certain persons "to become and be the first and present burgesses," freemen not being mentioned].—On this one observa-

(*z*) Proceedings of the Irish Society, p. 139.

tion would be sufficient: that if this clause created any difficulty, the Committee must look at all the other clauses of the charter, and then interpret the clause as to the election of members of Parliament by the objects which had been stated.

With regard to the question of usage, if the words of the charter clearly indicated the King's intention to give the right to the whole body, usage would be nothing; for it was admitted on all hands, that though usage was available where the meaning was doubtful, it could not be opposed successfully to the clear words of a charter. It was equally clear, that if the right were given originally to the body at large, it was not to be lost. What, then, was the usage? It had not been shown that the persons signing the return were the select body only, for the signature by less than the whole number of the select body amounted to nothing. The precept was in the corporate name, so was the return. In the interpretation of a charter granting a franchise, it was the duty of the judge interpreting to look to the protection, not the annihilation, of the franchise. The passages which had been read from the Irish Journals are of no weight, as authorities, either way; for a statement in a petition of a right of voting is of no importance where the question of right is not raised. No one, however, can divine what became of the questions raised on the petition of 1827 (*a*). Having thus disposed of the question of usage, the petitioner's case would not be rested on the return in 1661, which might be a solitary instance.—[A member of the Committee: The roll contains many instances of persons admitted freemen and not burgesses.—Mr. Hildyard

(*a*) The petitioners obtained leave to withdraw it, probably in consequence of a compromise; for on the same day one of the members petitioned against made his election to sit for Cashel, and one of the petitioners was afterwards elected in his place. Irish Journals, pp. 460, 493.

referred to one case where a person was elected a burgess afterwards.]—We say the corporate name and title includes the term "burgess," and that the omission of "capital" or "select" does not operate against the construction contended for on all the numerous clauses of the charter. Undoubtedly burgess here meant a member of the corporate body. The case which had been cited of *The King* v. *Jordan* (*b*), had no application to the present, for there the party was a capital burgess, and an officer of the corporation. With respect to the objection, that Arthur Long was a batchman, it was only necessary to refer to the words of the resolution, which were, that "they were *severally*, duly and unanimously elected freemen," words of themselves affording a complete answer to such an objection.

If it were established, that the stamp used on the admission of these voters was not the proper one, that could not affect them, although it was true that a party cannot prove his title without producing a stamped paper. The facts in the present case are, that when a discussion arose as to their rights in 1830, there was a difference of opinion between the distributor in Londonderry and the distributor in Coleraine as to the proper stamp, and the Attorney-general having been consulted (*c*), the question was decided by him in favor of the stamps which have been used. The 56 Geo. 3 repealed all former Acts (save as to unpaid duties), and the Indemnity Act provided for the penalty to be paid in affixing the stamp. Assuming, then, that, after argument, the judges had arrived at the conclusion that the proper stamps had not been used, still the Committee

(*b*) Cas. tem. Hardwicke, 255.

(*c*) Mr. Serjt. Merewether objected to this reference to the Attorney-general without producing the opinion which had been given, and the case laid before him. Mr. Harrison appealed to the Committee, whether he had not a right to do so, after the reference which had been made on the other side to the opinion of the 12 Judges.

are not to be governed by that decision. Suppose a man to have paid all the taxes that were demanded of him, ought he to lose his vote, because a surveyor of taxes found out afterwards, that he had not paid all he ought to have paid? Here, Boyd, the chamberlain of the corporation, was sub-distributor of stamps, and it was a violation of duty on his part to swear in these parties on a 5 *s.* stamp, if it was insufficient. The Committee, therefore, would not permit the vote to be destroyed on that ground.—[Chairman: The question is, are the admissions to be taken as signed *nunc pro tunc*?]—Being elected in 1797 members of the corporation, they were in part then admitted, and their admission was completed by the stamp.

Within the Reform Act these parties were duly entitled. In October 1830 they took every step which was possible for them to take; and due diligence having thus been used, and their applications rejected by the officers of the corporation, they are brought within the principle of the *Wexford case*; for here they had asked for the corporation-book, and it had been refused to be given them; they had asked for and paid for the proper stamps (*d*). Suppose the book had been sent up to the stamp-office, and the same stamps had been affixed there as were mentioned in the certificates, would it be contended that the votes would be bad? Here the parties had been placed on the poll in 1831. The use of the book having been refused, the parties procured stamped certificates, signed by the distributor, which stated that the claimant, "who was *admitted* a freeman of the corporation on the 1st of October 1797, has paid the stamp duty by law payable on such admission, there being no stamp of the above description in this office." This form did not warrant the inference, that the fact had been mis-

(*d*) Hudson on the Elective Franchise in Ireland, p. 430, the cases of Nathaniel Hall and Samuel Williams.

stated, for the certificates could not have been in any other form. These persons having voted before, were "entitled to vote" under the Reform Act.

With respect to the election in 1797, the case stood on higher grounds than that on which it has been put; for if, as contended on our side, inhabitants had a right to demand their freedom, these persons were entitled to be upon the roll in the best title which they had to be there. If, then, a stamp were only necessary to perfect the right of 1797, the stamp used was the proper one. The 33 Geo. 3, c. 38, only prevented the six years' possession from giving the right, and the words in it, "such burgess or freemen," refer clearly to the persons mentioned in the recital, as having by collusion obtained their names to be entered in the corporate books. That statute has, therefore, no application, and consequently the alleged sleeping on their rights could not affect the claimants in the present case, who had been actually admitted to vote at the previous election. In answer to the argument on the Reform Act, it has been proved, that these parties were freemen in law in 1830, and had perfected their titles in that year; *Austin* v. *Osborne* (*e*). Having been called up to be sworn, they took the oath, but under protest, in October 1831. It was said they were, on that account, honorary freemen, because not admitted until after March 1831. The Committee, however, could not allow this circumstance, which was a fraud practised to deprive those persons of their rights, to prevail against the fact, that their claim to exercise the privilege of voting has been established by the decision of the former Committee, which though not binding on the present Committee, ought not to be lost sight of. In 1830, every step, except that of procuring stamps, had been taken. The 4 Geo. 4, c. 55, which had been cited, applied only to counties of cities and of towns;

(*e*) 1 Comyns, 240.

and the argument on the 35 Geo. 3, c. 38, was answered by the fact that these persons, though they had accepted admission as a compliment, were entitled to it as a right.—[*Chairman*: Does Mr. Harrison agree that swearing is admission?]—That was admitted to a certain extent. Here the parties had demanded to be sworn in 1830, and must therefore be taken to have been admitted and sworn before the time mentioned in the Reform Act.—[*Chairman*: Suppose the admission to have taken place in 1830, ought not the stamp to have been a 3 *l.* stamp?]—It was contended that they were admitted in 1797.

Mr. Pease and Mr. Chaytor here referred to the practice in London and Durham, where persons were first admitted to the freedom of a trade, and subsequently to that of a corporation, in which cases the stamp on admission into the corporation was agreed to be the stamp in force at the date of the admission to the freedom of the trade (*f*).

The Minutes of the last Committee were then referred to, for the purpose of showing that the stamped certificates were produced before the election Committee of 1831, an objection to their admissibility, taken by Mr. Serjt. Spankie, on the ground that the distributor in Ireland had no right to receive the old duties, having been over-ruled (*g*).

Mr. Boyd was then recalled by order of the Committee, and examined. From his examination it appeared, that all persons, on admission into the corporation, take an oath, and subscribe their names to the roll, placing the date there themselves; that no admission was stamped before August 1830, in which month he had purchased stamps for the select body; that he had paid 3 *l.* stamp duty at that time, but had been admitted a

(*f*) See the Stamp Act, 56 Geo. 3, c. 56.
(*g*) Minutes, 1st August 1831.

burgess and alderman in 1821; that he considered himself to have been admitted a freeman when admitted as one of the 24 burgesses; that he still continued a burgess, the chamberlain, by the charter, being chosen out of the burgesses, and not being required to resign the one office on election to the other.

The Committee resolved, that Arthur Long's vote should be placed on the poll.

The counsel for the defending petitioners then declined further to contest the seat.

The Committee, after resolutions against the right of voting set forth in the statements of either party, found the right in these terms:

"That all the inhabitants of the town of Colerane, and the jurisdiction and liberty of the same, being admitted to their freedom of the said town, were, before the Irish Reform Act, entitled as burgesses of the said town, as well as the mayor, aldermen, and 24 burgesses, to vote in the election of members to serve in Parliament for the borough of Coleraine; and that, since the said Act, and subject to the provisions thereof, the mayor, aldermen, and all the burgesses hereinbefore mentioned, and all other persons qualified under the said Act, are now legally entitled to vote at every election of members for the said borough."

The Committee also resolved, "That Sir John Poo Beresford, Bart. was not duly elected."

"That Wm. Taylor Copeland, Esq. was duly elected, and ought to have been returned; and that neither the petition opposing the return, nor that defending it, nor the opposition to them, appeared to be frivolous or vexatious."

And the Committee reported to the House, "That they had altered the poll taken at the election, by adding to it the names of Arthur Long, &c. (14 in all), as having had a right to vote at such election."

When the vote of Arthur Long was proposed to be placed on the poll,

Mr. Follett objected that the Committee had no jurisdiction in the case, the Irish Reform Act having rendered the register conclusive in all cases except those of personal disqualification, pointed out in the 59th section. The present case, too, differed from all the others upon which Committees on Irish elections had come to a decision, inasmuch as it was that of a person whose name was not on the register, and the Act, by which for the first time the registration of freemen had been provided for, had made registration a condition precedent to the right to vote in all cases, except only in the event, which had not happened, of a dissolution of Parliament occurring before the first registration should have been completed. The English Act gave a claimant, rejected by the revising barrister, a right to tender his vote at the poll (*h*); but the Irish Act contained no such provision, and had declared, moreover, by the 54th section, that the certificate of registry should be conclusive of the right of voting. The case of the claimant before the Committee had been fully investigated before a tribunal, as competent to decide a question of law as a Committee of the House, and if dissatisfied with its decision, he might have appealed to the judge of assize, but this he had not thought fit to do. The Legislature, in providing these two courts, had manifestly intended to take away the former jurisdiction of Committees. An intention so clearly expressed was sufficient to effect that object; *Ex parte Benson* (*i*), *Cates* v. *Knight* (*k*). The diminution of expense which was contemplated by the Reform Acts could not be effected if a contrary decision were given.

A claimant who has been rejected by the registering barrister in Ireland, and has tendered his vote at an election, may be placed on the poll by a Committee.

(*h*) The like power is given by the 26th section of the Scotch Reform Act.

(*i*) 1 Deacon & Chitty, 329, 330, judgment of the Vice-Chancellor.

(*k*) 3 T. R. 442.

Mr. Harrison, in answer to the objection, insisted that the power of the House over elections, possessed by it before the passing of the Reform Act, had not been thereby taken away. The privileges of the House, of which this was one of the most important, stood at the least as high as an Act of Parliament, respecting which it had long since been the established rule of courts, that it could not be repealed, except by express words, or necessary implication (*l*). It was on this last ground that the Bankruptcy Court case (*m*), and that of *Cates* v. *Knight* had been decided. The 55th section of the Irish Reform Act, besides, saved all Acts not repealed or altered by its other enactments.

The neglect to try a question of corporate right in the Court of King's Bench, had been held not to affect the power of investigating such a question before a Committee; *Banbury case* (*n*), *Wexford case* (*o*), *Limerick case* (*p*), *West Looe case* (*q*). Here the case should be regarded as if it had been tried on the 26th of February last, as it would have been if the sitting member had not declined to defend his seat, and then no opportunity of trying the right on appeal would have been neglected. Besides, after the declaration made in the House, when the application made to enlarge the time appointed for considering the present petition was refused, "that the decision of the judges, on appeal,

(*l*) The authorities cited by Mr. Harrison were the same as in the *Oxford case*, *ante*, pp. 76 to 82, and note (*z*). p. 82; and also Lord Eldon's judgment in *The Attorney-general* v. *Mayor, &c. of Dublin*, 1 Bligh, N. S., pp. 335 and 358.

(*m*) See 1 Deacon & Chitty, 333, judgment of the Vice-Chancellor.

(*n*) Cited *ante*, p. 85.

(*o*) Hudson on the Elective Franchise in Ireland, p. 427. The cases of *Fowey*, Corb. & Dan. 155; *Sudbury*, Philipps' Cases, 189; *Bishop's Castle*, Minutes, 1820; *Portsmouth*, Minutes 1820; *Rye*, 85 Journ. 429, are in accordance with the decision in the *Banbury case*.

(*p*) Minutes, 23d May 1821.

(*q*) 3 B. & C. 683, judgment of Lord Tenterden.

would not bind the House" (*r*), it would have been idle to have prosecuted such an appeal. The voter, too, if the decision had been in his favor, must have come before the Committee to have his name placed on the poll; for that decision would have been given long after the termination of the election.

There was this important feature of difference between the English and Irish Reform Acts: by the former, registration had been for the first time introduced into the law of election, while the latter introduced only such modifications in the previously-existing law, as were necessary to prevent a scrutiny at the poll. This was done by the 54th section. In other respects the provisions of the Irish Reform Act, on comparison, would be found almost identical with those of the 10 Geo. 4, c. 8. The decisions which had been given this Session on the English Reform Act, were not in accordance with the opinions of the Government who had prepared and carried it, as had been declared by an influential member of it (*s*) in the *Ripon case.*

The Chairman, in the course of the argument, expressed his opinion, that the words, "diminish the expense of election," related to the expense at the poll; and he inquired, how the act of Committees taking off the poll votes on the register, could be rendered consistent with the provisions of the 54th section, except by confining the words "admitted to vote" to the act of voting at the poll?

Mr. Follett, in reply:

Undoubtedly the House had formerly the powers contended for on the other side, but having succeeded in asserting its privileges against the Crown, it soon found that, as a body, it could not be trusted with the

(*r*) Mirror of Parliament, Feb. 14, 1833, p. 213; speech of Lord Althorp.
(*s*) Colonel Maberly.

powers it possessed. The party prejudice, which prevailed on the discussion of questions of elections, led to the transfer of the right to decide on their merits to the eleven members sworn under the Grenville Act. That right, so far as related to particular votes, had since been narrowed by the Reform Acts. Such had been the decision of Committees this session on the English and Scotch elections, founded on the facts that the Legislature had provided courts to decide upon votes, and had pointed out in what cases such votes might be disputed before Committees. This had been done also in the Irish Act by the 59th section.

If a person were omitted from the original list by the neglect of the overseer in England, it was plain that he could no more be placed on the poll, than one who had been properly rejected, unless under the English Act he applied to the barrister to admit him on the register. If the barrister were mistaken in refusing to do so, a Committee might put him on the poll (*t*), and the House might correct the register, for which purposes the 59th and 60th sections had been introduced into that Act. But this could not be done under the Irish Act. A Committee might as well place on the poll a person not having a 10*l.* house, as one who was not registered. The words in the 12th section were, "no person shall be admitted to vote unless he shall have been qualified as aforesaid, and duly registered." If then the words "admitted to vote" applied only to the poll with reference to the fact of registry, they applied also in the case of a person not duly qualified. It was said, that if an election took place before an appeal, the party would lose his vote. Was there ever an Act of Parliament passed, in the working of which some difficulties and incongruities did not present themselves? In England, an overseer of the poor might put any

(*t*) See Dawson's case, *Southampton*, *ante*, p. 226.

name on the list, and if unobjected to before the barrister, a Committee could not strike it off. Thus in Bedford, 130 bad votes still remained on the poll. In Bristol, not a single vote was objected to; in London, peers of Parliament were to be found on the register. Under the Irish Act, only one case had been suggested, that of an election occurring immediately after registration, in which there was any incongruity.

The Committee resolved, "That they had jurisdiction in the case, and might put on the poll the name of Arthur Long, he having made his claim before the registering barrister, and been by him rejected, provided he should satisfy the Committee that he was qualified to vote at the election."

The following questions on the admissibility of documentary evidence occurred in the course of the above case.

A poll-book with an affidavit, in the form prescribed by 1 Geo. 4, c. 11, s. 3, but kept in the custody of the returning-officer, after the making the affidavit, until required to be produced before the Committee, is admissible in evidence.

When the poll-book was called for, a sealed parcel was produced by the chamberlain, which he stated himself to have received from the mayor, who had told him it contained all the papers he had it in his power to produce, in compliance with the Speaker's warrant served on him. The mayor was too ill to attend. After proof had been adduced of service on the mayor of the warrant, the parcel was opened. It contained the poll, with an affidavit in the form prescribed by the 1st Geo. 4, c. 11, s. 3, sworn by the mayor before the chamberlain, and dated 18th Dec. 1832. By the charter of Coleraine, the chamberlain is the officer having the custody of the records.

Mr. Serjeant Merewether objected, that there was no sufficient proof given of the authenticity of the poll-book, the statute only making the production by the proper officer evidence, in cases where the book had been delivered to that officer within 21 days after the election. Here the book had remained throughout in the custody of the mayor.

Mr. Law:

The mayor and the clerk of the peace might perhaps be subject to penalties, still the affidavit verified the poll, for it came direct from the returning-officer, who swore in it that no obliteration or alteration had been made in the poll.

Merewether, Serjt.

The third section provided for the custody of the poll-book. When it came out of that custody, it was to be deemed authentic. The affidavit which had been made, stated it to be the poll down to the date of it; but from that time no attempt had been made to show that no alterations had taken place in it. The book ought to have been kept in the custody of the chamberlain. There was no evidence, *primâ facie* or otherwise, to authenticate it.

The Committee expressed their opinion, that the book produced was the poll-book.

A poll-book of a former election, (without the usual affidavit,) which has been received by a previous Committee, is admissible in evidence.

The poll-book of 1831 being offered in evidence (u), the poll-clerk was called, and proved the book to be in his own hand-writing, except the words "first," and "borough of Coleraine." It had been produced before the Committee on the Coleraine election in 1831. Mr. M'Naghten, in whose office it was found, stated that he had no knowledge of how or when it came there. There was no affidavit of the returning-officer. An objection by Mr. Hildyard on this ground was withdrawn, after an observation by the Chairman, that the book was received by the former Committee.

A list of freemen prepared by a former chamberlain, in obe-

A list of freemen, in the hand-writing of Mr. Barry Beresford, the former chamberlain of the corporation, prepared by him in pursuance of an alleged order of the House, but not completed in time to be returned to

(u) *Ante*, p. 478.

the House, was, after argument, declared by the Committee to be inadmissible. A similar decision was given with respect to an actual return made to the House by the present chamberlain, of the names of the freemen, and the dates of their admission, which were stated by him to have been copied from the books of the corporation. Mr. Harrison had avowed his intention to contrast the return with the books; and Mr. Follett had insisted, that if there was anything in the return not contained in the corporation-books it would clearly not be evidence, and that in no court of justice could a return made to Parliament be evidence, as between parties litigating adverse rights.

dience to an order of the House, but not returned to the House, and a return to the House of the names of the freemen, with the dates of their admission, made by the present chamberlain from information derived from the corporation-books, held to be inadmissible.

The certificate of Mr. Justice Moore having been proved, Mr. Harrison objected to its being read as evidence, it being necessary first to show, that the cases decided upon were precisely similar to that of Arthur Long.

Mr. Follett: The judgment of a single judge, or of the 12 judges, may be brought before the Committee. We offer the certificate as the opinion of the 12 judges of Ireland, on a case precisely similar to the present.

A judge's certificate, stating the opinion of the 12 judges, on a question of law submitted to them for their opinion by that judge, not allowed to be given in evidence, the question having been tried *ex parte* before the single judge.

It was then proved by Mr. M'Naghten, that he had instructed counsel, on both sides, to argue the question of right of three freemen of 1797, George Macfadden, James Ewing and William Jackson, before Mr. Justice Moore; that he had authority from the freemen themselves on their part, and that his instructions to Mr. Boyd, (who was selected because he had attended the registry, and was retained at the election by Mr. Alderman Copeland) had been, to argue the case strenuously on the other side, because, if the case were decided against Sir John Beresford, it would save him the expense of defending his seat; this was after the notice given by Sir J. Beresford, declining to defend his seat; that Alderman Copeland's agents were informed of the intention to go before the judge of assize, but were not shown the briefs, which contained the same

facts as those proved before the registering barrister, with the exception of some additional extracts from the charter, inserted in Mr. Boyd's brief; that a case was drawn by Mr. Justice Moore, from the facts proved before him, and 12 copies made of it, for the purpose of being submitted to the 12 judges, which the judge undertook to do; that the petition for leave to defend the return had been prepared by the witness, and read to the petitioners, (three of whom did not vote, or tender their votes, at the election,) at his office.

Mr. Harrison submitted, that the whole transaction was a fraudulent one, and had for its object the obtaining *ex parte* the opinion of the judges against his case, so as to influence the Committee in its decision; and, therefore, that the certificate ought not to be received.

Mr. Follett: If the facts were incorrectly stated, that should be shown, and the opinion would not then apply. An opinion had been given by the judges, who might perhaps have refused to hear the case. What the motives were which influenced the parties in trying the case, was a consideration quite immaterial. No *quo warranto* was ever moved for in the Court of King's Bench, except from electioneering motives. The freemen had given authority to Mr. M'Naghten to try the question; but even if they had not done so, what was there to prevent the judgment of the 12 judges from being authority on that statement? It was not contended that the statement was a sufficient authority to strike a vote off the poll, but it would be a general authority as to a case similarly circumstanced. The statement and the opinion would be printed in the Irish reports, and would then, beyond dispute, be authority on a case like the present.

The Committee decided, that the certificate could not be received in evidence.

CASE XXVII.

GALWAY COUNTY.

The Committee was appointed on the 14th of May 1833, and consisted of the following Gentlemen:

Dominick Browne, Esq., M. P. for Mayo County, (*Chairman.*)

George Sinclair, Esq. M. P. for Caithness-shire.

Fretcheville L. B. Dykes, Esq. M. P. for Cockermouth.

Edward George Barnard, Esq. M. P. for Greenwich.

Charles St. John Fancourt, Esq. M. P. for Barnstaple.

Sir Edward Thos. Trowbridge, M. P. for Sandwich.

Charles Adam, Esq. M. P. for Clackmannanshire.

Lord Charles A. Fitzroy, M.P. for Bury St. Edmunds.

The Hon. Pierce Butler, M.P. for Kilkenny County.

Ralph Etwall, Esq. M. P. for Andover.

James Alex. Stewart Mackenzie, Esq. M. P. for Ross and Cromarty.

Petitioners:—Electors.

Sitting Members:—Thomas Martin and James Daly, Esqrs.

Counsel for the Petitioners:—Mr. Harrison, Mr. Follett, and Mr. M'Dermott.

Agents:—Messrs. Fladgate, Young & Jackson.

Counsel for Mr. Daly:—Mr. David Pollock, Mr. Thesiger, and Mr. Hodges.

Agents:—Messrs. A. & R. Mundell.

THE petition stated, that at the commencement of the last election for the county of Galway, the sitting members, and Sir John Burke, baronet, were candidates, and

that on the second day Xaverius Blake, Esq. was proposed as a fourth candidate by the friends of Mr. Daly. It then contained allegations of endeavours, on the part of the agent of the sitting member, to obstruct the poll, and of bribery by the sitting member, "his agents, friends and managers, and others employed in his behalf," and also raised a case of scrutiny. It prayed a declaration, that Sir John Burke ought to have been returned, and that his name might be substituted in the return for that of Mr. Daly, or that the election might be declared void.

Poll-books, which have been verified by the affidavit of the returning-officer on delivering them to the clerk of the peace, though the affidavit is not annexed, and the poll is not summed up, are admissible in evidence.

The poll-books had not the usual affidavit of the sheriff in writing, nor was the poll summed up, but it was proved, that when the books were delivered to the clerk of the peace, the sheriff took an oath, administered to him by a magistrate, that the books were the poll-books of the last election, without any obliteration or erasure. They were admitted to be sufficiently authenticated.

The numbers indorsed on the return were: for

Mr. Martin	-	-	1,456
Mr. Daly	-	-	1,368
Sir John Burke	-	-	1,356
Xaverius Blake	-	-	482

John Darmody's case.

The first case proceeded upon was that of John Darmody, one of the second class of the petitioners' objections.

A Committee has jurisdiction to scrutinize the right of voters, admitted by the registering barrister.

The question of the jurisdiction of the Committee was raised and argued by Mr. Thesiger in opposition, and Mr. Harrison in support of it. The Committee resolved, "That the Committee are competent to scrutinize the right of voters admitted by the registering barrister(*a*)."

A tenant, under a lease exe-

Evidence was then adduced to prove, that in October 1832, shortly before the registry, Mr. Martin, a lessee of

(*a*) No objections had been raised to the right to vote before the barrister.

Mr. James Daly, was applied to by him to give up a portion of some lands called Muckenagh, included in his lease. The surrender took place by letter (*b*), written on the 10th of October, by direction of Mr. Smith, the agent of Mr. Daly, and delivered by Mr. Martin, either to Mr. Smith or Mr. Daly, both of whom were present when the delivery took place. The affidavit of registry of the voter stated his title to be "a house and land of the clear yearly value of 10 *l.* at Muckenagh, &c.," held under "a lease bearing date the 1st of November 1831." The land was identified with that surrendered by Mr. Martin. Darmody had occupied it previously as a tenant-at-will to Mr. Martin, who settled the rent with him and other tenants up to the 1st of November 1832. The notes of hand given by them for the rent, were delivered over to Mr. Daly's agent for the balance due from Mr. Martin, a step which he had never before taken. Mr. Martin stated, that he had had it in contemplation for a year or two to give up the land. He stated also, that a lease was considered in Ireland a discharge for all demand of rent up to its date; and that he had promised all the tenants leases two or three years before.

cuted at the time of the registry, but dated back, is not entitled to vote, though he has been in the occupation of the land, as sub-tenant to another person, from whom he had a verbal promise of a lease.

Mr. Harrison, upon this evidence, insisted that the vote must be struck off the poll.

Mr. Pollock, in support of the vote:

Under a lease of this description the voter was entitled to be registered: 2 & 3 Will. 4, c. 88, s. 13, and *Middlesex case* (*c*). The voter was in the actual occupation of the land, under the promise of Mr. Martin to grant him a lease, a promise by which Mr. Daly was

(*b*) A question was here raised, whether a surrender of a lease, made by a letter, could be proved by parol evidence, and in support of it, *Rex* v. *Holy Trinity, Hull*, 7 B. & C. 611, was cited. The objection was not, however, pressed.

(*c*) *Cole's, Vulliamy's*, and *Pryce's* cases, 2 Peck. 105, 106.

bound, and upon which he acted. The promise and the execution of it were conformable to each other, and in the absence of a written agreement, the terms were evidenced by the lease. The Reform Act did not require a lease before occupation; all that it required being, a lease at the time of registration, and possession for six months previously to that time: by the first section of it, a provision was made for sub-lessees, who might also vote as occupiers under the 10 Geo. 4, c. 8. Darmody, therefore, was properly registered, and was consequently entitled to vote.

Mr. Harrison: The under-tenants were tenants at will, who were not entitled to be registered.

The Committee resolved, that the vote of John Darmody be struck off the poll.

Patrick Darmody's case.

The next case was subject to the same objection, but it was contended by Mr. Thesiger, that it was essential for the counsel for the petitioners, notwithstanding the decision of the Committee on the preceding vote, to establish the time of the surrender, supposing the fact of a surrender to have been proved. There had been no occupation by Mr. Martin. Neither the lease, nor the notes, nor receipts, had been produced. The production of them might vary the evidence before the Committee. If the lease were made at the time of its date, that would have been a virtual surrender by Mr. Martin of the interest he held in the land.

Mr. Harrison was heard in answer to the objection.

The Committee resolved, "That having put out of view all the evidence relating to the surrender and the notes, and having taken the rest of the evidence into their consideration, the Committee are of opinion that the vote of Patrick Darmody is bad, and must be struck off the poll."

On the case of William Ford, another of the same class as the above, Mr. Follett stated, that the vote stood on precisely the same grounds as that of Dermody. William Ford's case.

Mr. Thesiger, in support of the vote:

The second section of the 10 Geo. 4, c. 8, only provides, that no person shall be admitted to vote at any election of a knight of the shire, unless he shall have an estate of freehold in the county of the clear yearly value of 10 *l.*; and the 14th section provides, that any person who shall, after the first session of registry, register a freehold according to the provisions of the Act, shall be entitled to vote at any election, to be held by virtue of any writ tested six calendar months at least after such registry. The question then is, whether the Irish Reform Act introduces any such qualification of the right acquired under the 10 Geo. 4, as that the voter's lease shall have been executed six months prior to the registry. All that is required by the 13th section of the latter Act is, that the voter "shall have been in the actual possession, or in the receipt of the rents, issues or profits, for his own use, as the case may require, for six calendar months next previous to his registry." Assuming then that the lease was not executed six months prior to the registry, still the voter was proved to have been in possession six months under the Irish Reform Act, and to have been possessed of a freehold lease under the 10 Geo. 4, c. 8, which was the foundation of his right, and he was in actual occupation at the time of the registry. It was not necessary that the possession and the lease should be derived from the same person. For, supposing the landlord to have sold the land, and the purchaser to have granted a lease within six months, that would have been good, if the transaction were *bonâ fide*.

Mr. Follett, in reply, on the statute cited:

The 10 Geo. 4, c. 8, has no application to the present case, for it did not confer a right on freeholders, who always voted, but only took away that right from the 40 *s.* freeholders. The only difference between the provisions in the two Acts is, that under the Reform Act the period of six months is referred to the registry, and not as before to the election. The expression, "as the case may require," means, of course, under title. The point in dispute has been decided by the 12 judges of Ireland, on an appeal from Louth (*d*).

The Committee decided the vote to be bad; and the remaining votes of the class (15 in all) were afterwards ordered to be struck off by consent.

A majority of two being thus established for Sir John Burke, Mr. Harrison suggested, that the sitting member should then proceed to strike off three of the votes for Sir John Burke. This was objected to by Mr. Thesiger, who submitted, that the petitioners ought to be required to proceed to make out their case of bribery against the

(*d*) The judge before whom the appeal was tried was C. J. Bushe. The reporters have been favored with the following copy of a note in the handwriting of Judge Burton, which does not go to the extent contended for in argument:—

"County of Louth. Appeal from registering barrister, Spring 1833. The registering barrister, at his sessions before January 1833, rejected the claim of Lawrence Flinn to register as a freeholder of the county, both on account of insufficiency of value, and of not having possession within six months, as required by the 2d & 3d Will. 4, c. 88, s. 13. Upon appeal before me at the last spring assizes, the jury found for the claimant on the question of value; and the other question, which I reserved, arises from the following facts: The claimant had been in possession of the lands for 50 years, under a lease which expired upon the death of Geo. 4. After that he held, without any writing or *verbal agreement for a lease*, at the same rent as in the former lease. And on the 3d July 1832 he obtained a new lease of the same lands, under which he is entitled to register if he has been six months in possession before the registry within the meaning of the statute.

"1 May 1833. At a meeting of the judges (C. J. Doherty absent) it was held by all the judges present, that the claim to register was properly rejected."

sitting member, by which course, if the bribery were proved, much expense to the parties, as well as the time of the Committee, would be saved.

The Committee resolved, that the counsel for the petitioners be instructed to produce evidence to prove the case of bribery alleged against the sitting member.

Agency must be first proved before evidence of the acts or declarations of the alleged agent can be admitted.

Evidence was then gone into for the purpose of proving the case of bribery. This case, on each side, occupied nearly the whole of the 20th, 21st, 22d, 23rd and 28th days of May. The rule, that agency is to be first proved before evidence can be given of the acts or declarations of the alleged agent, was fully recognized in the course of this case. The acts and declarations of Mr. Dennis Clarke and Mr. Charles Blake, senior, were allowed to be proved, a *primâ facie* case of agency being made out against each to the satisfaction of the Committee: in the one case, the facts of Mr. Dennis Clarke being frequently in Mr. Daly's committee-room, when Mr. Daly was present, and of persons during the election being directed by Mr. Livesey, the law agent of Mr. Daly, to go to Mr. Clarke for their expenses, and of payments made by him, would seem to have been the grounds, upon which the Committee considered the agency established: in the other, proof was adduced that Mr. Charles Blake canvassed with Mr. Daly, was frequently in the committee-room when Mr. Daly was there, taking a very active part, and was more frequently in communication with Mr. Daly than other persons, and still his agency was not considered as sufficiently proved to admit of evidence of mere declarations by him, unaccompanied by any act. Witnesses were afterwards produced, who swore that he had gone out with bludgeon-men to keep back Sir John Burke's voters; that he had given directions to bring up voters in carriages, which had been engaged at Tuam; that his son hired one carriage at Tuam to bring up two voters, and that he himself had canvassed a voter (John Kelly),

offering him at the same time "good expenses." The Committee then resolved, that a *prima facie* case of agency had been made out against him. The fact of agency in these cases was rebutted by the evidence of Mr. Dennis Clarke and Mr. Livesey, and the alleged bribes were proved to be the payment of expenses to out-voters, who (with the exception of one person, who had been taken out of gaol at the time of the election) had most of them come from a considerable distance; the payments, in most instances, not being one-fourth of the sums claimed by the parties, some of them being as low as 5 *s.*, and the highest being stated at 5 *l.* Some of the petitioners' witnesses having spoken to money being lodged by Mr. Clarke in the hands of third parties, previously to votes being given, with the view of securing them, Mr. Clarke distinctly denied his having done so.

The Committee determined, that the charge of bribery had not been established against the sitting member or his agents (*e*).

24th May. John Carroll's case.

The counsel for the sitting member then proceeded upon a class of cases, including six persons, tenants under Mr. Darcy, whose leases were alleged to have been dated back, for the purpose of enabling them to register. The first case was that of John Carroll, who had registered under a lease bearing date the 1st of November 1831. A witness, Edward Stanford, stated, that he was employed by Mr. Darcy, of Ballyforan, in the month of October last, to prepare leases for his tenants, which he did to the number of 13, as he believed, and among them one for the voter, which was attested by the witness, and upon which the voter

(*e*) It was afterwards proposed by Mr. Pollock, to recriminate against Sir John Burke; but no further proceedings took place after Mr. Harrison had stated this to be against the practice, Sir John Burke not being a petitioner. See note, *ante*, p. 466.

registered. The vote was ordered to be struck off the poll.

On the votes of Patrick Gavin and Thomas Kenny, two others of the same class, in addition to the evidence in the above case, and the fact that Mr. Darcy's brother was one of the witnesses to the lease of Gavin, evidence was given of an ejectment served by Mr. Darcy, upon a Mr. Rochfort, the immediate tenant of the lands occupied by the 13 voters, about a year previous to the execution of the leases; and it was stated, that Mr. Darcy, in April 1832, had the land surveyed, and divided into certain dimensions among each of the 13 tenants, who had before held under the middle-man ejected, Mr. Darcy stating, that he had made a new contract with them, and that he would divide the lands, and give each a part, so as to enable him to register. They had previously held in common. Mr. Darcy's orders with respect to the leases were in these words, "let the leases be dated for 1831, the tenants have been in possession all through; the lands have been in my possession previous to the date of that lease."

Patrick Gavin's and Thomas Kenny's cases. A tenant under a freehold lease, executed at the time of the registry, but dated nearly 12 months back, held entitled to vote, where he had been in the occupation of the land before the date of the lease, as tenant to the party granting it, with an agreement for a lease entered into more than six months before the registry.

The argument on Patrick Gavin's case having turned principally on the question of whether the witness Stanford had been corroborated by a Mr. Cruise, who had been called solely for that purpose, that on Kenny's case will alone be given.

Mr. Thesiger:

A *prima facie* case of disqualification having been established by the evidence against the voter, it is incumbent on the petitioners to prove, that he was in possession under a freehold lease. It has been proved, that, in the month of April, there was an agreement between Mr. Darcy and the voter; if that agreement was in writing, we will not dispute that he was in possession. The Statute of Frauds was re-enacted *ver-*

batim by the Irish Act, 7 Will. 3, c. 12, by which it is in the first section enacted, "that no estate, lease or interest, either of freehold, &c. of, in, to, or out of any messuages, &c. shall be granted, unless by deed or note in writing, signed by the parties granting the same, or their agents, thereunto especially authorized by writing, or by act and operation of law." A contract, such as has been proved, would not be enforced by a court of equity. These persons, therefore, were not in under a lease or agreement, capable of being enforced, until October. It had been unsuccessfully argued in Darmody's case, that the voter was in possession of the land up to the execution of the lease.

[A Member of the Committee: There he held under Martin, not under Daly.]

Mr. Follett:

It is unimportant, whether the original contract was in writing or not, when once executed. Here the party, for more than a year before the registry, gets possession of the land. Mr. Darcy, in 1831, was in possession of the freehold, and might, therefore, have made what leases he chose. Mr. Martin, in Darmody's case, could not make a valid promise of a lease, because he had not an interest sufficient to enable him to do so.—[Mr. Thesiger: Martin could have granted leases for his own life.]—He could not have given leases under which his tenants could have registered. Here the voter continues in possession of the land under a contract, and that contract has been executed; and it is therefore immaterial, whether it was originally executory or not; besides, it is incumbent on the other side to give evidence, that the agreement was by parol. Under the Reform Act, it is sufficient to show, that the voter has been in possession of the land for six months, and has a lease.—[Chairman: By the law in Ireland, he must have been six months in possession, under the instrument by virtue of

which he claims.]—Not where he has held under a contract, which is carried into effect by the execution of a lease.—[A Member of the Committee: Could these voters be made freeholders, until the land was divided?] If they were originally in possession under the agreement, and continued to be so down to the time of granting the lease, they were good freeholders.

The Committee decided, that both the votes should stand on the poll.

Evidence given on the discussion of other votes of the same class, cannot be read against the person whose vote is under consideration.

In Kenny's case, it was also decided, that the petitioners' counsel was not at liberty to refer to the evidence given in the two former cases, and to consider it as applicable to the vote under consideration. This course was, however, afterwards assented to, for the purpose of saving time.

Thomas Horan's case. Where there are two persons of the same name, the list must clearly distinguish the person intended to be objected to, or the objection cannot be gone into.

On Mr. Pollock's proposing to question the vote of Thomas Horan, it was objected by Mr. Harrison, that no sufficient notice had been given in the list of objections to distinguish the person, there being two persons of that name in the same barony. The Committee, after hearing Mr. Pollock, determined that the notice was not sufficient.

30th May. John Mannion's case. Notice to produce his lease, served on the voter on the day before the ballot for the Committee, held sufficient to let in secondary evidence.

Secondary evidence was, after argument, admitted of the lease under which John Mannion, a voter, held; a notice to produce it having been proved to have been served upon him on the 13th of May, the day before the ballot for the Committee (*f*).

(*f*) The *Cricklade case*, Petrie, 528, is in accordance with the above decision. There the Committee refused to admit parol evidence of the contents of deeds, being the petitioner's title to a qualification, notice not having been given to the petitioner to produce them, before the day appointed for taking the petition into consideration. In the *Fowey case*, 1 Peck. 523, a notice given *pendente lite*, was held insufficient; see, however, ibid. 525. So notice to produce, served on a prisoner during the assizes, two days before the trial, is insufficient; *Rex* v. *Ellicombe*, 1 Moody & Robinson, 260. Notice is in all cases

Michael Soughlehan's case. Service on a voter's son, the voter being absent, and no proof of his return being offered, held insufficient to let in secondary evidence.

In the case of Michael Soughlehan, a notice to produce his lease had been served at his house upon his son, the voter being absent. No proof was adduced of the voter's having returned home. The Committee determined, that the notice not having been personally served, secondary evidence could not be gone into.

Mr. Thesiger then said, he would not trouble the Committee any further upon that vote, and that he was instructed to proceed next upon another distinct class of voters, with respect to whom the objection was, that the lease, upon which they claimed to be registered, was executed in blank by the lessor, Mr. Martin, the other sitting member.

Paul Steely's case.

The first case was that of Paul Steely. A witness was called, who stated himself to have been employed on the 4th or 5th of November 1832, by Mr. Lennard, the attorney of Mr. Martin, to fill in printed leases, previously executed by Mr. Martin, with the names of the tenants and the quantity of land, and to have thus filled in about 14 or 15 leases at Tuam, and some at Clifden, and among them one for the voter. There were no witnesses names at the time of the execution by Mr. Martin, but two persons witnessed the signature of the voter. The leases were usually dated six months back. One of the witnesses stated, that he had put his name as attesting the execution of some of the leases, though he had not seen Mr. Martin sign, because he was perfectly conversant with his handwriting. Notice to produce the voter's lease had been served on Mr. Martin, on the 7th and 9th of May, and on the voter on the 13th of May.

essential; *Bedfordshire case*, 2 Lud. 568. Where the document is even in court, in the hands of the opposite party, it has been doubted whether it can be called for, without previous notice to produce having been given; *Cook* v. *Hearn*, 1 Moody & Robinson, 201, n. referring to *Bevan* v. *Water*, Moody & Malkin, 235. See 1 Phillipps on Evidence, 428; 1 Starkie, 345; and Roscoe, 4, 5. The principal cases before Committees, on the subject of such notices, will be found in Rogers, p. 262, *et seq.*; and see the *Gloucestershire case*, pp. 44, 107, 123, 124, 184.

Mr. Thesiger proposed to call Mr. Martin; to which Mr. Harrison objected, on the ground that Mr. Martin had been in the room during the sitting of the Committee.

A member of Parliament, who had been in the Committee-room after he had been informed that he would be called as a witness, may be examined.

The agent for the sitting member proved, that he had told Mr. Martin, on the first day of the Committee's sitting, that he ought not to remain in the room; and that on another occasion, on the examination of a witness named Flaherty, having told Mr. Martin he must go out, which he objected to do, he said he must then serve him with a Speaker's summons, to which Mr. Martin replied, "there was no occasion, for that he would go out," which he then did, though he had frequently been in the room since. Mr. Martin had been requested to attend by a letter from the Chairman.

Mr. Harrison, in support of his objection:

It is an established rule, that a witness who has been in the committee-room cannot be called; *Aylesbury case* (*g*), where the witness rejected was a member of the House; *Portsmouth case* (*h*); *Dublin case* (*i*), where the witness was only five minutes in the room, while counsel were speaking. In the *Oxford case* (*k*), Wyatt was admitted to give evidence, because he knew he ought not to have been in the room. Here an intimation had been given to Mr. Martin, on the second day of the Committee's sitting, that his evidence would be required; but, though sitting here daily, no subsequent intention to call him has been expressly announced, and no proper step has been taken to make him a witness. In the *Aylesbury case* (*l*), service of the summons, in the course of the trial, on one who had been in the room previously, was held sufficient to exclude his testimony.

(*g*) 2 Peck. 265. (*h*) Minutes, 26th May 1820.
(*i*) Minutes, 1831. See also the *Clare County case*, Minutes, 3d March 1831.
(*k*) *Ante*, p. 105. (*l*) 2 Peck. 266.

Mr. Thesiger:

The object of the rule is, to prevent the danger to the parties, which may arise from a witness, who has watched the evidence, shaping his testimony to meet the case. This reason cannot exist in the present instance, as there can be no such danger to Sir John Burke, from Mr. Martin's evidence. Mr. Martin knew from the first day, that he would be called as a witness, and ought, therefore, to have inquired if the petitioners objected to his remaining; this they would not have done, and surely the want of a formal application ought not to prevent his being examined. The first *Southwark case* (*m*) is in favor of the right to examine the witness.

The Chairman stated, that the Committee were of opinion that Mr. Martin should be examined.

Mr. Martin admitted the employment of the witness, Patrick King, at the registry, by Mr. Lennard, for the purpose of the leases, and that there were leases sent to Clifden and Tuam, *partly filled up*, executed by him, and attested in most cases, and that in some instances the names of the lessees and of the lands were not mentioned; that there might have been forty sent to Clifden not completed.

A witness must answer a relevant question, though the answer may affect his title to property.

On the question, "Was Steely's lease filled up with his name before it went to Tuam, or before it went to Clifden?

Mr. Harrison objected, that no witness could be called upon to answer a question which might impeach his own title; *Weymouth* and *Melcombe Regis case* (*n*).

(*m*) Clifford, 108. See the case of *Doe* d. *Good* v. *Cox*, cited Clifford, 114, in which a new trial was granted by the Court of King's Bench, because Mr. Justice Gould had rejected the evidence of a witness, who had remained in court after notice given to withdraw.

(*n*) 2 Peck. 229.

The Committee, after hearing Mr. Thesiger in answer, and Mr. Harrison in reply, decided, that the question might be put.

Mr. Martin then stated, that the lease was filled in with the name, the holding and the rent, and witnessed, if at all, by Mr. M'Hugh, and that Steely had been in possession probably for a year before, having purchased the lease from a person named Welsh.

The Committee resolved, "That the vote of Paul Steely be struck off the poll."

June 1st. William Mitten's case.

The objection to William Mitten was abandoned, at the suggestion of the Committee, after an objection by Mr. Harrison, that in his list of objections the name was spelled Miller.

Anthony Strokes's case.

The case of Anthony Strokes was another of the same class; but the Committee did not apparently credit the evidence of a witness, Festy M'Donogh, who stated that he had served 222 notices to produce leases, and among them one on the voter, at places considerably distant from each other in Connemara, in three days. On the next day of sitting the following resolution was communicated by the Chairman, "That it is the opinion of the Committee, that all leases of which notice was given to Mr. Martin by Mr. Mundell be produced forthwith." But Mr. Martin having stated, that the leases were not in his possession, but in that of his tenants, and that no counterparts were executed; and an objection being made by Mr. Harrison on the score of expense, to the length of adjournment which would be necessary to ensure their production, and Mr. Harrison having suggested, that if Mr. Martin had even been summoned he could not have been compelled to produce any lease, the Committee came to the following resolution: "That the Committee, in consequence of Mr. Martin's evidence, did not insist at present on the leases being produced;" and ultimately determined, that there was not sufficient evidence of the service of the notice upon Anthony Strokes, whose vote was therefore left on the poll.

Mr. Thesiger then submitted, that as the Committee had decided that sufficient evidence of the service of the notice on the tenants had not been given to let in secondary evidence, Mr. Martin should now be called upon to produce the leases. After considerable discussion, the Committee came to the following resolution: "That the Committee are of opinion, that Mr. Martin cannot, under the present circumstances, be called upon to produce the leases.

June 4th. The Committee came to the following resolution: "That a *summons* (*o*) be sent to each of Mr. Martin's tenants in Ballynahinch and Moycullen, to produce his lease forthwith;" and it was then suggested, that in the meantime the parties should go into some other part of the case.

J.O'Flynn's case. A voter's evidence, that he was a paid agent, allowed to be read against his vote.

Mr. Harrison then proposed to strike off the vote of John O'Flynn, and for that purpose desired to read his evidence from the Minutes, which was ultimately permitted by the Committee (*p*). The voter admitted himself to have been employed as an agent, and paid. His vote was ordered to be struck off.

June 5th. Michael Earl's case. Counsel allowed to examine as to a con-

The objection to the vote of Michael Earl was, that he had been bribed. A witness called to prove the fact, after having said, "that he had been employed to try to prevail on Mr. Martin's tenants to give their second votes to Mr. Daly, and had done so; that he had no

(*o*) This was explained by the Chairman to mean a notice. Printed notices were accordingly prepared in the following form:

"House of Commons, Galway County Election Committee.

"Sir,—Take notice that you are hereby required forthwith to produce, or send for production, before this Committee, the deed, lease or instrument under which you were registered, for the purpose of voting, and did vote, at the last election for the county of Galway, wherein, if you fail, other evidence will be given of the nature, contents and import thereof.

"Dated this 4th day of June 1833."

(*p*) This was also done in the case of John Kelly, who had alleged "a promise to him by Mr. Charles Blake, sen. of "good expenses," if he would vote for Mr. Daly, a statement which apparently was not believed by the Committee, as his vote was retained on the poll.

previous talk with the voter, but gave him 5 *l.* after he voted;" was proceeding to state what passed between himself and a man called John M'Donough Peter, when it was objected by Mr. Pollock, that being on the case of Michael Earl, the evidence should be confined to him, and the communication should first be brought home to the voter, because otherwise a prejudice might be created, which it would afterwards be difficult to get rid of. The rule as to agency applied to this case, which was an attempt to enforce a penalty, and ought therefore to be proved strictly.

versation between a party who paid a voter after voting, and a third person before the vote was given, it being understood that the communication thus made would be brought home to the voter.

Mr. Follett answered, that this was not like the case of agency; for here it was only sought to strike off a particular vote, to do which it would of course be necessary to connect the voter with the conversation between the witness and Peter. He had already shown the witness to have canvassed Mr. Martin's tenants, and he hoped to be enabled to prove, that Earl voted in consequence of some promise made by the witness to Peter, and communicated by him to the voter.

The Committee decided "that the question might be put, but Mr. Follett was to confine himself as closely as possible to the case of Earl, and of Earl only." The examination having been continued, the witness stated, that he had no conversation with Peter about Earl. The vote was ultimately retained on the poll, as were four others of the same class.

The counsel for the petitioners then abandoned the case (*q*).

A majority was then established for the sitting member, and the Committee resolved, that James Daly, Esq. was duly elected, and that neither the petition, nor the opposition to it, appeared to be frivolous or vexatious.

They further reported, in the usual form, the alterations made in the poll.

(*q*) This was occasioned by the last resolution of the Committee.

CASE XXVIII.
BOROUGH OF ENNIS*.

THIS was a petition on the ground of bribery; and the acts alleged to have been committed were deposed to by the bribed parties, of whom one only voted for the sitting member, Mr. Francis Macnamara, the other two having voted for his opponent, Mr. Bridgeman. The Solicitor-general for Ireland, as counsel for the petitioners, opened all the cases, and stated that the proof of agency was so intermingled with that of bribery, that he could not prove the one without also proving the other. No sufficient evidence of the existence of any committee was adduced; but in a room, called the committee-room, a voter alleged that he had been canvassed in the presence of the sitting member, by a Mr. D'Arcy, who was very active in his interest, and that on his saying, in answer to a promise by D'Arcy of the interest of the Macnamara family, "If I vote for nothing, I shall vote for Mr. Bridgeman," Mr. D'Arcy replied, "Is it money you want?" and then, pointing to a closet in the room, added "Come in here!" upon which the sitting member left the room.

Upon this evidence the Committee resolved, "That the conversation between the witness (Molony) and D'Arcy, in the closet, be received; but the Committee intimate, that counsel should prove agency as soon as possible."

The case proceeded, and Molony stated the offer of money in the closet, his refusal of it, and his polling for Mr. Bridgeman.

After the petitioners' case was closed, the Committee-room was cleared for the purpose, it is believed, of ascertaining how far any answer to it was necessary. The Committee, however, determined to hear the counsel for the sitting member, who ultimately retained his seat.

* The publication of this and the following cases has been delayed, in the expectation of an alteration in the law of bribery.

CASE XXIX.

TOWN OF CARRICKFERGUS.

The Committee was appointed on the 28th of March 1833, and consisted of the following Gentlemen:

Daniel O'Connell, Esq. M. P. for Dublin City (*Chairman.*)

James Henry Callander, Esq. M. P. for Argyleshire.

John Madocks, Esq. M. P. for Denbighshire.

Henry Aglionby Aglionby, Esq. M.P. for Cockermouth.

Sir Edw. Dolman Scott, Bart. M. P. for Lichfield.

The Hon. Pierce Butler, M.P. for Kilkenny County.

Sampson Stawell, Esq. M. P. for Kinsale.

Fitzstephen French, Esq. M.P. for Roscommon County.

Wm. Lewis Salusbury Trelawney, Esq. M. P. for East Cornwall.

Morgan O'Connell, Esq. M.P. for Meath County.

Leonard Dobbin, Esq. M. P. for Armagh.

Petitioners:—Electors.

Sitting Member:—Conway Richard Dobbs, Esq.

Counsel for the Petitioners:—Mr. D. Pollock, Mr. Follett and Mr. O'Hanlon.

Agent:—Mr. John Wallace.

Counsel for the Sitting Member:—Mr. Harrison and Mr. Thesiger.

Agents:—Messrs. Fladgate, Young & Jackson.

THIS was the petition of the "undersigned freeholders leaseholders and householders of the town and county of the town of Carrickfergus, in Ireland, electors who had a right to vote at the last election of a member to

serve in Parliament for the said town and county, and who therein and thereby claimed to have had such right;" and it alleged acts of bribery by the "sitting member, his agents, friends and managers, and others, employed for and acting on his behalf," and a colorable majority to have been thereby obtained over Sir Arthur Chichester, one of the unsuccessful candidates. It prayed that the election of Mr. Dobbs might be declared void, and that the name of Sir Arthur Chichester might be substituted in the return.

A petition may be heard which is signed by freeholders residing at a distance beyond seven miles from the borough.

Mr. Thesiger objected to the hearing of the petition, on the ground that the petitioners were all residing at a distance of more than seven miles from Carrickfergus. The statute 9 Geo. 4, c. 22, had, in the 4th section, provided, that no petition could be received, unless the petitioners claimed therein to have a right to vote at the election petitioned against. That claim was, of course, intended to be made *bonâ fide*, which could not have been done in the present instance, as freeholders residing beyond seven miles from a borough are incapable of voting; 2 & 3 Wm. 4, c. 88, s. 9 (*a*).—[The Chairman: Our ablest judge, Mr. Baron Pennefather, has decided, that freeholders residing beyond seven miles are entitled to vote.]—A Committee of the House of Commons has power to reverse even the decision of a judge. In the *Herefordshire case* (*b*) a similar objection prevailed.

Mr. Pollock and Mr. O'Hanlon:

This objection, if available at all, should have been taken in the House, and not after the petition has been referred to a Committee, who are bound to inquire into its merits. The *Middlesex case* (*c*), where the objection, though taken in the House, did not prevail, and the

(*a*) See Molyneux's Digest of the Irish Reform Act, p. 25, note (23).
(*b*) Cited 1 Peck. 210; see the case of *Nottingham*, Corb. & Dan. 198.
(*c*) 1 Peck. 294.

Carmarthenshire case (*d*), are authorities against the sitting member.

The Committee unanimously decided, that the petitioners should proceed with evidence in support of their petition (*e*).

The case was then proceeded with, and it appeared from the evidence, that Lord George Hill, the late representative of the town of Carrickfergus, having abandoned his intention of again offering himself as a candidate, had placed his interest at the disposal of four gentlemen in the town, one of whom was Mr. David Legg, the law agent of Lord George Hill at his election. By these gentlemen, Mr. Dobbs had been solicited to become a candidate, and had consented to do so, on the express understanding, that he should be at no expense, and that no illegal means should be resorted to, to ensure his election. The expenses attendant on the registry, by reason of the number of freemen to be admitted, were considerable; and on one occasion, in the presence of the sitting member, an observation was made, to the effect that money might be obtained from the Conservative Society of Dublin. Eventually the sum of 500 *l.* was advanced by that Society, for the purposes of the election, by a cheque, which was entered by the treasurer, in his banking-book, in the name of Mr. Dobbs, and the amount was traced to Mr. Legg. Acts of bribery were proved to have been committed by persons employed for that purpose by Mr. Legg, who was also proved to have ordered the insertion in a newspaper of Mr. Dobbs's address to the electors.

(*d*) 1 Peck. 289.

(*e*) See the cases of *Boston*, 1 Peck. 435; and *Wexford*, Hudson on the Elective Franchise in Ireland, p. 426; in which last case the petitioners had voted at the election, which accords with the above, all the petitioners, except one, being described in the petition as having voted for Sir A. Chichester.

April 10th. Mr. Harrison on this day said, he felt it his duty no longer to occupy the time of the Committee, when he was unable effectually to protect the interests of his client. The evidence, as it stood on the Minutes, though much of it rested on assumption, was sufficient to affect the sitting member; for although he took no part in the election, and was never privy to any irregularity, yet the circumstance of the money advanced by the Society having been paid to Mr. Legg, and applied by him in the manner which had been proved, was in law sufficient to make him an agent, though in fact he never had been such. This statement the sitting member was anxious should be made, as he felt it a question of character.

Evidence of general bribery received.

The counsel for the petitioners then tendered evidence of general bribery; and the Committee determined, that they would hear any evidence which could be produced on either side to prove it. It was then proved, that on the side of Mr. Dobbs, 1,100 *l.* or 1,200 *l.* had been expended in paying voters, and on that of Sir Arthur Chichester, 200 voters at least had been bribed, the smallest sum paid being 5 *l.*, out of which 1 *l.* 5 *s.* was deducted for the cost of the voter's admission to his freedom; and it was stated, that nearly every public-house in Carrickfergus (of which there were twenty) had been open on one side or the other, and that bribery had prevailed at former elections.

Letters from a sitting member, whom it is not sought to affect with knowledge of general bribery at an election, are not admissible in evidence.

Some letters from Mr. Dobbs to the Rev. John Chaine being called for by the counsel for the petitioners, who admitted that they were not going to show Mr. Dobbs to have been connected with the bribery, the Committee decided, that the letters should not be produced.

The Committee ultimately came to the following resolutions:

"That the sitting member was not duly elected; that the last election was a void election; and that neither

the petition nor the opposition to it appeared to be frivolous or vexatious."

The Committee also made the following special report to the House:

"That the most gross and scandalous bribery appears to have prevailed on both sides at the late election for the town and county of the town of Carrickfergus; and that although it does not appear that the said Conway Richard Dobbs, Esq. did personally take any part in such bribery, yet that his return was procured by his agents and friends by bribery.

"That a great proportion of the constituency, composed of freemen of the corporation, have been influenced solely by bribery in giving their votes at the late election; and that it appears to the Committee, that similar corrupt practices have prevailed at former elections for the said town and county of the town of Carrickfergus.

"That the Committee beg leave to submit to the most serious attention of the House the evidence of gross bribery and corruption which appears upon the Minutes of Evidence (*f*).

"That great expense has been occasioned to the parties by the delay in the production of certain documents, which were required in the progress of the petitioners' case; and that the Committee would also beg leave to direct the attention of the House to the facts which appear upon the Minutes of Evidence upon that subject."

The production of letters respecting an election, written by a candi-

In the course of this case, letters written previously to the election by the sitting member to a witness under examination, who was a friend of his, were ordered to be produced, "as they were not by law protected;" but

(*f*) A Special Committee was appointed, and a Bill brought in to disfranchise the borough, which, however, has been postponed until the next Session.

didate to a friend, may be compelled; but secondary evidence cannot be given of a letter from a third person to which reference is made in one of them.

where a reference in one of these letters was made to a letter from a third person to the sitting member, which had been forwarded to the witness, the Committee determined, that as the letter, if produced, would not have been evidence, no question should be put as to the contents of it.

Where the production of the documents of a private society is desired, a warrant served on one member of the committee is sufficient.

A Speaker's warrant having been served on Sir George Rich, the treasurer, and also a member of the committee, of the Conservative Society, to produce certain documents belonging to that Society, specified in the warrant, the Committee decided, that those documents must be produced, although the treasurer was not entitled, by the rules of the Society, to the custody even of the books relating to his office, unless by the permission of the committee. In consequence, an application was made to the House for leave to adjourn for a week, from the 2d to the 9th April, which was granted.

CASE XXX.

BOROUGH OF WARWICK.

The Committee was appointed on the 7th of May 1833, and consisted of the following Gentlemen:

Sir Ronald Craufurd Ferguson, M. P. for Nottingham, (*Chairman.*)

Ellis Cunliffe Lister, Esq. M. P. for Bradford.

The Hon. John James Knox, M. P. for Dungannon.

Lord Arthur Marcus Cecil Hill, M. P. for Newry.

Thos. Kitchingman Staveley, Esq. M. P. for Ripon.

William Tatton Egerton, Esq. M. P. for North Cheshire.

Christopher Thomas Tower, Esq. M. P. for Harwich.

Sir John H. Dalrymple, Bart. M. P. for Edinburghshire.

Lord Visct. Molyneux, M. P. for South Lancashire.

The Hon. Charles Langdale, M. P. for Beverley.

Thomas Bish, Esq. M. P. for Leominster.

Petitioners:—1st, William Collins and John Enoch and others, Electors, against the election and return of Sir Chas. John Greville.

2d, George Cattell Greenway and H. Robbins, against the election and return of Edward Bolton King, Esq.

Sitting Members:—Major-general the Hon. Sir Charles John Greville, and Edward Bolton King, Esq.

Counsel for the 1st Petitioners, and for E. B. King, Esq.:—Mr. Harrison and Mr. Serjt. Heath.

Agents:—Messrs. Lowdham, Parke & Freeth; and Mr. Heath and Mr. Haynes, Warwick.

Counsel for Sir Charles John Greville, and for the Petitioners in the 2d Petition:—Mr. Serjt. Merewether, Mr. Rogers and Mr. Follett.

Agents:—Mr. Hayward, and Messrs. Tibbitts, Warwick.

BOTH the petitions in this case alleged bribery and treating against one of the sitting members, and prayed

that their returns respectively might be declared void. The first of them, which was the only one proceeded in, also contained charges of undue interference by the Earl of Warwick, the lord lieutenant of the county, and recorder of the borough of Warwick.

When two petitions are presented on the same day, a Committee will hear them in the order in which they stand in the Journals, not in which they stand in the Votes.

The first question that arose was, which of the two petitions should be first heard. They were both presented on the same day, the 20th of February; in the printed Votes for that day, the petition of Greenway and Robbins were entered first, in the Journals that of Collins and Enoch. Mr. Bull, the Clerk of the Journals, was called, and stated that the entry on the Votes was an error, and it was set right in the Journals, under the direction of the Speaker and the Chief Clerk, as was always done when any error was discovered in the Votes, which were made up at such a time, and in such confusion, that it was impossible to offer them in evidence on any occasion. He also stated, that the Journal was published about a week after the day to which the entry related, and that there was always a copy lying in his office, which was a public one, to which the public had access, and another in the Library, and another was given to the Speaker; and that he published a list, which he gave to any one who applied to him, and on that the petitions stood in the same order as in the Journals.

The Committee unanimously agreed, that they must abide by the Journals, and refused a request of Mr. Harrison for an adjournment, on the ground of his clients having been misled by the Votes; and the Chairman stated to him, that if they were not prepared, it was the result of want of proper precaution on their part.

Mr. Harrison then opened the facts of his case, and stated the general law as to bribery and treating; but he informed the Committee, that from not having been aware that he should have to begin, he was not prepared with proof of the poll, not having summoned the

mayor of Warwick, who was the returning-officer. Evidence was then given of exertions having been made, since the agents of the petitioners against Sir C. Greville had been informed, on the preceding evening, that there was a difference between the Votes and the Journals, in order to procure the mayor's attendance; and the Committee, in consequence, adjourned to the next day, when the poll was regularly produced and proved by the mayor.

An adjournment allowed to admit of the poll being proved.

Mr. Serjt. Merewether objected to the petitioners proceeding on this petition, on the ground that one of them, Mr. Collins, had signed the return of the two sitting members, and the other, Mr. Enoch, had communicated at the poll the fact of the third candidate's resignation, which led to the election, without further dispute, of Sir C. Greville. It was a principle of parliamentary law, that those who concurred in the election of a candidate, should not afterwards be allowed to come forward and dispute that election, for which the *Herefordshire case* (*a*) was an authority, where the Committee refused to allow petitioners to proceed with their petition against a candidate for whom they had voted.

It is not a valid objection to a petition against one of the sitting members, that one of the petitioners has signed the return of both sitting members, and the other has announced the resignation of a third candidate.

Mr. Harrison replied, that Mr. Collins had signed the return of one of the sitting members, Mr. King, for whom he had voted, and consequently was obliged to sign that of the other, who was included in the same return (*b*). With respect to Mr. Enoch, it surely could not be held, that announcing the retirement of one candidate, whom he had supported, was concurring in the

(*a*) 1 Peck. 210.

(*b*) In the *Weobly case*, 18 Journ. 181, the House refused to proceed on a petition, because the petitioners had signed the indenture by which the member was returned. From the instruction to the Committee in the case of *Poole*, 32 Journ. 85. "First, to examine the manner of procuring and signing the petition," it would appear that the House then considered a petition of electors, under such circumstances, to be irregular.

election of another whom he had opposed. Nothing could be more distinct, at any rate, than either of these acts from that of voting, as had been done by the petitioners in the *Herefordshire case*, who had, besides, voted for the sitting member after they knew he had been guilty of the acts of treating which formed the ground of their petition, and some of whom had actually received his tickets.

The Chairman stated, that the feeling of the Committee was, that the objection was not a valid one.

Agency proved before evidence of acts of bribery admitted.

The case was then proceeded with. Agency was in all cases proved previous to evidence being given of any act of bribery by an individual, and the sufficiency of the proof in all of them was made the subject of an argument; but no points of novelty occurred in the course of the discussion.

The Committee, at length, having intimated their opinion, that the charge of bribery had been established against Sir C. Greville, Mr. Serjt. Merewether abandoned the case on his part; but the Chairman informed him, that although, with respect to the character of Sir C. Greville, the Committee had no doubt whatever but that it would stand as high in the country as it ever had done, yet independently of the question of his seat, there were other matters alleged in the petition which it was the duty of the Committee to go into, namely, the charge of general corruption, which had long prevailed in the borough of Warwick, and also the charge of the unconstitutional interference of Lord Warwick.

A witness was then called to prove the charge of treating, whose examination occupied the whole of that day.

On the next day that the Committee met, Mr. Harrison stated, that it had been intimated to the parties for whom he appeared, that it was not intended to pursue the petition against Mr. Bolton King, and that, under those circumstances, feeling on his side that they had

done enough to make the seat of Sir C. Greville void, and looking at the length of time which would he occupied in the investigation, and the expense which would be incurred, he should feel he acted wrongly by his clients and the Committee, if he pursued the inquiry any further, and that it was therefore not his intention to offer any further evidence.

The Chairman stated, that it was impossible for the Committee to proceed if the petitioners did not bring forward evidence; that they could only act upon the evidence produced; and they could not command the petitioners to bring forward evidence, when it was attended with so much expense.

The Committee then resolved, "That Sir Charles Greville was not duly elected, and that the last election was a void election, so far as regards his return; that neither of the petitions, nor the opposition to them, were frivolous or vexatious; that gross bribery appeared to have prevailed at the late election for the borough of Warwick on the part of the agents of Sir C. Greville; that although Sir C. Greville did not appear personally to have taken part in such bribery, yet that his return was in a great measure to be attributed to bribery; that upon the other allegations in the petition of Wm. Collins and J. Enoch, the counsel for the petitioners declined to produce any evidence; that the petition of G. C. Greenway and H. Robbins was withdrawn from the consideration of the Committee."

(c) The Minutes of Evidence taken before this Committee were printed, and on the 21st of June, on the motion of Sir R. Ferguson, a Select Committee was appointed to consider and report on the best mode of preventing bribery, treating and other corrupt practices in future elections of members to serve in Parliament for the borough of Warwick;" for the debate on which occasion, see the Mirror of Parliament of that date. That Committee made its report on the 22d of July, in which, after stating that the steward of the Earl of Warwick had been proved to have procured the illegal inser-

tion in the poor-rate of many persons, with the view of creating votes, and that 3,000 *l.* and upwards, the money of Lord Warwick, had been expended in promoting the political interest of Sir C. Greville at the election, "to prevent the recurrence of the above corrupt and illegal practices, and to secure the purity and freedom of election in the borough of Warwick, the Committee recommends an enlargement of the boundary, and an increase of the constituency, by the addition of the adjoining parish of Leamington Priors." See the Report in the Journals of this Session, and the speech of the Earl of Warwick in the House on the 26th of August.

END OF PART III.

CASE XXXI.

BOROUGH OF HERTFORD*.

The Committee was appointed on the 7th of March 1833, and consisted of the following Gentlemen:

Ralph Bernal, Esq., M. P. for Rochester, (*Chairman.*)

Edward Stewart, Esq. M. P. for Wigton, &c.
The Earl of Kerry, M. P. for Calne.
Joshua Scholefield, Esq. M. P. for Birmingham.
William Clay, Esq. M. P. for the Tower Hamlets.
James Whitley Deans Dundas, Esq. M. P. for Greenwich.
James Ewing, Esq. M. P. for Glasgow.
Charles John Kemys Tynte, Esq. M. P. for Bridgewater.
The Hon. Frederick Spencer, M. P. for Midhurst.
John Walter, Esq. M. P. for Berkshire.
Richard Montesquieu Bellew, Esq. M. P. for Louth County.

Petitioners:—Thomas Slingsby Duncombe, and John Eden Spalding, Esquires.

Sitting Members:—Lord Viscount Ingestre, and Lord Viscount Mahon.

Counsel for the Petitioners:—Mr. Joy, Mr. Rogers and Mr. Wood.

Agents:—Mr. Beavan, Mr. Gill and Mr. Gripper, Hertford.

Counsel for the Sitting Members:—Mr. Harrison, Mr. Serjt. Heath, Mr. Follett and the Hon. John C. Talbot.

Agents:—Messrs. Sherwood & Thorpe, and Messrs. Nicholson & Longmore, Hertford.

THE petition in this case was by the two unsuccessful candidates. The allegations in it were confined to bribery and treating, and a charge of unconstitutional

* For the greater part of the notes of this case, the reporters are indebted to their friend, Mr. Ombler.

interference by the Marquis of Salisbury. It prayed that the election and return might be declared void.

It appeared by the evidence, that early in the year 1832 a club, called the Union, was formed in Hertford, which originally consisted of 30 voters for that borough, and held its meetings once a fortnight, in the evening, at the Wheatsheaf Inn in that town, the landlord of which was named Robert Drummond. Afterwards the number of members became unlimited, persons being admitted on a promise to vote for Lord Ingestre, who had been an unsuccessful candidate in a contest with Mr. Duncombe in 1831, and on their admission entering their names in a book. For one or two meetings after this extension of the club, the members, who had previously paid for what they had, were entitled to three pints of beer, on paying for one only, and subsequently they had their beer for nothing. The club continued its meetings until about a fortnight after the 2d of August, on which day Lords Ingestre and Mahon made their public entry into the town, as candidates for the representation of the borough on the first vacancy. The club marched in procession, having badges with the word "Union" in red and white letters, on a blue ground, which were ordered by Drummond, and submitted to Mr. Nicholson, the solicitor of the Marquis of Salisbury, and who was subsequently one of the law agents of the sitting members, for his approval. On that day white tickets "for refreshments" to the amount of 2 *s.* 6 *d.*, signed "S. Dack," were generally distributed in the town, and afterwards blue tickets "for refreshments" to the same amount, but not to any great extent, were issued by the Union, and signed "R. D.;" 5 *s.* tickets, some 10 *s.* tickets, and tickets for flour were also distributed.

These tickets had been taken as money in the shops and public-houses of the town. A witness, Ann Harding, who had received a 5 *s.* ticket, took it to Dack, and

asked him if he gave change for it. He said, "No; they were given for the good of the tradespeople of Hertford." She then laid it out at Mr. Pollard's, a linen-draper, who was proved to have ascertained from Dack, that he would pay for as many as might be taken. A servant of Dack's, in obedience to his order, went round on one occasion to the shops in Hertford, to ask if they had any of Lord Ingestre's tickets, as they should receive the money if they brought them down. The money to take up those tickets was proved to have been furnished to Dack by Mr. Nicholson.

On the proposal of one Bryant, who was concerned in the formation of the Union, its meetings as a separate body were discontinued, and it met, with the other clubs, at a corn warehouse, which was nicknamed Rat's Castle, from the number of seceders from Mr. Duncombe's party who met there. Before this occurred, Lord Ingestre was stated to have attended one of its meetings, in company with Mr. Nicholson, and to have expressed a wish to meet all the clubs in one body. Dack, who had signed the tickets beforementioned, opened, and kept open until the close of the county election, a beer-shop, under the sign of the Talbot Arms, at which a committee of 15 persons, called Dack's committee, met, and where many of the voters had been entertained at different times prior to the teste of the writ. The sign was paid for by Mr. Nicholson. There had also been various entertainments given, at first once a fortnight, afterwards once a week, to the different clubs at Rat's Castle, the number of persons entertained varying from 200 to 400. No entertainments or tickets were given after the teste of the writ; the last meeting at Rat's Castle being on the 27th of November, on which occasion the health of Mr. Dack and the committee at the Talbot Arms was proposed in the presence of Lord Mahon. The writ was tested the 3d of December. During the election public-houses were opened, but it was proved, as well by Mr. Nicholson as by some of the publicans, that he forbad

the opening of any houses after the teste of the writ. Some bills were, notwithstanding this injunction, stated to have been delivered to him. Sarah Caffree, a publican, who had supplied beer and provisions at Rat's Castle on the 27th of November, to the amount of 8*l.* 5*s.* 6*d.*, and at her own house on the two polling days to the amount of 10*l.* 18*s.* 10*d.*, having delivered her bill, was directed by Mr. Nicholson to take it back and get it signed, which one Tisoe undertook to get done, and to re-deliver it to Nicholson, who, when applied to on the 30th of January to settle the bill, said he could not then, but he thought it might be paid in from 14 to 16 days. Dack, Twaddle, a slopseller in the town, and some others, were stated by many witnesses to have given or promised them money or articles of clothing to induce them to vote for the sitting members, or one of them. Most of these witnesses, however, voted for the petitioners. A witness, named Thomas Russell Davis, stated a promise of 10*l.* for his vote to have been made to him by Lord Mahon, in the presence of Mr. Nicholson. Beside this, there was no proof in the case that either of the sitting members was cognizant of any of the alleged acts of bribery, or of treating, after the teste of the writ.

Mr. Nicholson distinctly denied the truth of Davis's statement (*a*), and also disproved the agency of Dack, Twaddle, Laurence and others, who were alleged to be agents of the sitting members, and said, that he had only employed Dack to manage the clubs, an office which ceased with their meetings on the 27th of November, and had not authorized the issuing of tickets, although he gave him money to pay for them, and had expressly forbad him to treat the voters after the

(*a*) This witness had also stated a promise at the same time by Mr. Nicholson, to run his pen through an account for 3*l.* 15*s.* due for law expenses. This was also denied by Mr. Nicholson. The witness Davis has had a true bill found against him for perjury, in his evidence before the Committee, the prosecution for which has been removed by *certiorari*.

teste of the writ; and having ascertained that Dack had, notwithstanding, entertained some at his house, he had refused to pay what had been thus incurred. He admitted that he had paid 2,500 *l.* for expenses previously to the teste of the writ, covering a period of nearly a twelvemonth, of which 500 *l.* was the cost of banners, &c., 100 *l.* had been paid for wine and refreshments sent by one Bentley to Rat's Castle, and 100 *l.* for flour; and that he looked to the sitting members for repayment; and that after the election blankets had been given, as well to persons who had not voted as to the voters, and that those who voted for both the sitting members had received two blankets, and those who voted for one of them had received one blanket only. The blankets were the gift of the Marchioness of Salisbury, who had caused them to be distributed by Mrs. Nicholson about Christmas for three years, the usual number being between 300 and 400, but more had been given away on the last occasion. It appeared that there had been a practice for many years in Hertford of giving polling or vote-money, originally only 5 *s.*, but latterly 10 *s.*, for a split vote, and 1 *l.* for a plumper. This had not been paid on the occasion of the election in question, but the payment was admitted to be still expected; on the election in 1831 about 350 had received vote-money. Messrs Nicholson, Longmore, Spence and Sworder were proved to have been the only authorized agents of the sitting members, and the payment of 2,000 *l.* by Lord Mahon into Masterman's bank, to the credit of Mr. Nicholson, was proved by a clerk of Messrs. Coutts & Co. Besides these four gentlemen there were not any persons empowered to incur expense for any purpose whatsoever after the teste of the writ. A committee of five persons, chosen by ballot, at the desire of Lords Ingestre and Mahon, out of a larger body of friends in the interest of the sitting members, was appointed, who sat at the Salisbury Arms, and whose duties were confined expressly to the conduct of the canvass, the giving of

Vote-money.

information to the agents, the care of the general arrangements, and the bringing up of voters. Mr. Edward Laurence, one of the persons alleged to be agents, and to whom Nicholson referred the bell-ringers for payment, was one of this committee.

Interference of the Marquis of Salisbury.

Upon the charge against the Marquis of Salisbury, the Committee came to no resolution. In support of it the evidence was nearly as follows: Some voters, tenants of the Marquis, stated, that having voted for Messrs. Duncombe and Currie in 1831, they had received notice to quit; but having become members of the Union, and promised to vote for Lords Ingestre and Mahon, they were allowed to continue in their houses. A practice was shown to have existed of granting leases of the Marquis's houses in Hertford from week to week, determinable on 14 days' notice, with an agreement by the tenant to pay 50 *l.* liquidated damages, in the event of any impediment being offered on his part to the re-entry of the Marquis on the premises on the expiration of such notice; and an application was made to the House for the purpose of procuring the production, by the Marquis in person, of one of these leases, or of letting in secondary evidence of their contents. This was a motion for which notice was requisite, according to the practice of the House (*a*), and the necessity for making it was removed by the Marquis of Salisbury sending to the Chairman of the Committee a similar lease, granted by him of some of his cottage property at Hatfield. The circumstance of the Marquis riding through the town on the 16th of November, escorted by a party in the interest of the sitting members, with their colors tied to his horse's head, and preceded by their flag and band, an occurrence which was shown to have been a mark of respect to his Lordship, and of the sense entertained by many of the inhabitants of an attack which had been made on the Marchioness some time before; and the use made of

(*a*) See the message to the Lords in the *Galway case*, 82 Journ. 394.

one of his Lordship's waggons to convey into the town a number of strangers on the nomination day, who assisted in dispersing the mob of the opposite party, and were afterwards paid by the steward of the Marquis, were the other facts insisted on.

The principal part of the arguments on both sides were, as to the credibility of the witnesses and the weight of the evidence; the only legal points in dispute were, as to the amount of proof necessary to establish the agency of certain individuals, who the petitioners contended had been guilty of acts of bribery, the effect of offers of bribes which had not been accepted, and of the expected payment of vote-money, and the legal consequences of the issue of refreshment tickets, and the interference of the Marquis of Salisbury.

Mr. Joy and Mr. Rogers, for the Petitioners:

With respect to the agency of Dack, it is proved that he was employed to superintend the clubs and to issue tickets by Mr. Nicholson, the authorized agent of the sitting members; and at a dinner given by them his health and that of his committee was drank, in their presence. Twaddle constantly accompanied them in their canvass, and superintended the bringing up of their voters to the poll. Lawrence was one of a committee of five persons chosen by ballot, at their request, to conduct the election; he also attended them in their canvass, and was the person to whom Mr. Nicholson referred the bell-ringers for the payment of their legal demand: all these persons were thus recognized by the sitting members as their agents, and they were all actively engaged in a system, as we contend, of general corruption, for a considerable period, to which the sitting members are indebted for their seats. It is hardly possible, unless indeed the whole town of Hertford was leagued in a conspiracy to conceal it from them, that the sitting members were not to a certain de-

gree acquainted with it; but whether they were or not, the existence of it, without any actual proof of their knowledge, would be sufficient to avoid their election, according to the law of Parliament, as settled by the decision of the Liverpool Committee in 1831 (*b*). Wherever, too, at common law, a person has derived a benefit from the existence of circumstances, which caused a sufficient presumption of his liability, he has been held liable, although no direct evidence of his having personally done any act to render himself so, can be given; as where a man recovered a horse in consequence of a handbill, offering a reward for it, he was obliged to pay the reward, although it was not shown that he had authorized the handbill (*c*). When a party has so acted as to hold out another as his agent to the world, he has always been held bound by his acts; *Runquist* v. *Ditchell* (*d*), *Pickering* v. *Busk* (*e*), *Neal* v. *Erving* (*f*), *Hazard* v. *Treadwell* (*g*). If a man wishes to give only a limited authority to an agent, he must declare that to be his intention; for how can strangers obtain information as to his private instructions. These doctrines of law have been more especially held to apply to agents during elections; *Felton* v. *Easthope* (*h*), *Ridler* v. *Moore* (*i*), and *Honeywood* v. *Geary* (*k*). Committees have always held, that where a man is proved to have been an agent for the lawful purposes of an election, unlawful acts, done either by him or by a sub-agent appointed by him, affect the principal; *Durham case* (*l*), *Middlesex case* (*m*), Shepherd on Elections (*n*). If the agency of these persons is established, we contend that we have proved acts of direct bribery by each of them.

(*b*) Minutes, 1831.
(*c*) Anonymous, cited in *Runquist* v. *Ditchell*, 3 Espin. 64.
(*d*) *Ubi sup.*
(*e*) 15 East, 38.
(*f*) 1 Esp. 61.
(*g*) 1 Strange, 506. See also *Prescott* v. *Flinn* and Others, 9 Bing. 19.
(*h*) Rogers on Elections, 220.
(*i*) Clifford, 371.
(*k*) 6 Esp. 119.
(*l*) 2 Peck. 186.
(*m*) Ibid. 32.
(*n*) P. 105.

There are other instances, however, in which the proffered bribe was not accepted; the refusal of it makes no difference as to the criminality of the person who tendered it; *Rex* v. *Vaughan* (*o*), *Sulston* v. *Norton* (*p*). Besides, however, these particular acts of bribery, a general system of corruption was practised, by the promise of vote-money, which it is admitted will be given, and by the issue of refreshment tickets, which latter circumstance singly was held sufficient to render void the election in the case of *Berwick-upon-Tweed* (*q*). The effect of the Treating Act was to strengthen, not to diminish, the operation of the law, by taking away all discretion from Committees as to treating after the teste of the writ. Before it passed, Committees might in their discretion avoid elections on account of treating previous to that period, if they considered it was carried to an unconstitutional extent, and there is nothing in that Act to abridge their powers, in a case where it has been pursued to such an excess as in the present case. If, however, the Committee deem themselves bound to consider only the acts of treating committed after the teste of the writ, we contend that there is sufficient proof of its having been sanctioned by the agents of the sitting members, although their acknowledged agent refused to give a formal authority for it. Even, however, if all the bribery and treating in this case were put out of the question, still we should contend, that the election ought to be avoided, on account of the unconstitutional interference of the Marquis of Salisbury, in contravention of so many resolutions of the House of Commons on the subject (*r*).

Mr. Harrison and Mr. Follett, for the sitting members:

The only persons who come within the enactments

(*o*) 4 Burr. 2400. (*p*) 3 Burr. 1236. (*q*) 1 Peck. 401.
(*r*) See them collected in Rogers on Elections, p. 205.

of the Bribery Act (*s*), are those who, "by themselves or any persons employed by them, corrupt or procure any person or persons to give or to forbear to give his or their votes." Committees have constantly, therefore, refused to unseat members on the ground of bribery, unless it has been proved, that they or persons employed by them have been guilty of it, whatever the proof may have been of the general existence of corruption in their favor during the election; *Chester case* (*t*), *Ilchester cases* (*u*), *Liverpool case* of 1813 (*x*), *Newry case* (*y*). They have always required, too, that the agency of the persons stated to be so employed should be most clearly proved; *Cirencester case* (*z*), *Mitchell case* (*a*). In the *Liverpool case* of 1831, evidence was given of the sitting member having declared that no election could be carried there without bribery, and "that the same thing was done on the other side." In *Ridler* v. *Moore*, and *Honeywood* v. *Geary*, there was clear proof, that the committees, whose acts were in question, were the general agents of the members; but no one would contend that committees were always so, for whose seat would be safe, if the acts of every member of his committee were to bind him? There is no proof of a general authority having been given to any of the alleged agents in this case; and if an agent with only a limited authority, as that of Dack, to the issuing of tickets and superintending the clubs till the 27th of November, or that of Laurence, to the direction of the canvass, and the bringing up of voters, outsteps the bounds of his authority, and is guilty of illegal acts, his principal will not be accountable for them; *Fenn* v. *Harrison* (*b*), *Harding* v. *Greening* (*c*), *Middlesex case* (*d*). Even in the *Dur-*

(*s*) 2 G. 2, c. 24.
(*t*) Corb. & Dan. 68.
(*u*) 1 Lud. 465. and 1 Peck. 304.
(*x*) Minutes of Evidence.
(*y*) *Ante*, p. 149.
(*z*) 1 Peck. 466.
(*a*) 1 Lud. 83.
(*b*) 3 T. R. 757.
(*c*) 1 B. Moore, 477. S. C. Holt, 531.
(*d*) 2 Peck. 34.

ham case, which has been cited on the other side, the Committee refused to allow proof of illegal acts by the agent, until it was proved that the sitting member had seen and promised payment of a bill incurred by that agent's orders, which included charges for expenses contrary to law. The utmost length, indeed, to which the doctrine of the liability of a candidate for the acts of his general agent can be carried, is, where he has the disposal of his money and also the management of the election. This is the whole that can be collected from the *dicta* of Lord Tenterden in *Felton* v. *Easthope*, which, after all, was only a summing up at a *nisi prius* trial by a judge, who, however great in the other branches of his profession, had little knowledge of, or practice in, Parliamentary law. Admitting, however, that a *primâ facie* case had been established against the sitting members, it has been completely rebutted by the evidence produced on their side; and it is hoped that the Committee will follow the precedents of the *Taunton* (*e*), *Penryn* (*f*), and *Newry cases* (*g*), in disbelieving the agency of persons, when the actual agents employed by the members have come forward and disavowed them for all but special and limited purposes. As to the offers of bribes which were declined, although we deny the existence of them, still if they were even admitted, in Parliamentary law the offence of bribery is not complete till the bribe is accepted and acted upon; *Barnstaple* (*h*), *Dumfermling* (*i*), and *Taunton cases* (*k*). The vote-money is clearly not illegal, *Lord Huntingtower* v. *Gardner* (*l*);

(*e*) 1 Minutes, 1831.
(*f*) Printed Minutes, 1827.
(*g*) *Ante*, p. 149.
(*h*) 1 Peck. 90.
(*i*) 1 Peck. 7.
(*k*) Minutes, 7 March 1831. The resolution there was, "That an offer to bribe not accepted, does not constitute bribery, so as to avoid the election." In the *Newry case*, Mr. Harrison stated, that in the *Taunton case* the summing up and reply were both waived, so that the law was not fully discussed.
(*l*) 1 B. & C. 297.

and the tickets given for refreshment, without any stipulation whatever as to the vote (as was done in the *Berwick case*), were still less so. As to the treating, the acts, to come within the provisions of the statute, must be committed after the teste of the writ, and here there is clear evidence, that after that period the authorized agents of the sitting members directed none, and forbad some, of the public-house keepers to give any more refreshment. Whatever may have been the extent of the treating by persons unconnected with the candidates, it is alike the law of Parliament and of the courts of Westminster Hall, that they are not to be held affected by it, unless it is proved that either they or their authorized agents have been concerned in it; *Chester case* (*m*), *Hughes* v. *Marshall* (*n*).

Denying, as we do, that any unconstitutional interference was exercised by the Marquis of Salisbury, yet still, should the Committee be of a contrary opinion, the utmost effect that it ought to have with them ought to be, to cause a special report to the House respecting it. In the *Helston case* (*o*), the strongest interference was proved

(*m*) Corb. & Dan. 68.

(*n*) 2 Crom. & Jer. 118.

(*o*) The report of the Committee in that case, after declaring that the sitting members were duly elected, and that neither the petition nor opposition to it were frivolous or vexatious, was "That it appeared to the Committee that an illegal agreement had for some time existed between the Most noble George Frederick, Duke of Leeds, and the greater part of the members of the corporation of the borough of Helston, in relation to the return of members to serve in the Commons of the United Kingdom for the said borough, in violation of the freedom of election, and contrary to the standing orders of this House and the laws of the realm, made for the prevention of bribery and corruption;" 68 Journals, p. 344. The minutes of evidence were afterwards printed in the Parliamentary Papers for March 1813, and a motion was subsequently made for the impeachment of the Duke, which was lost; 68 Journals, p. 586; Hansard's Parliamentary Debates, vol. 26, p. 796. A Bill was subsequently brought in to secure the freedom of election at Helston, which passed the Commons, but was thrown out in the Lords; Hansard's Parliamentary Debates, vol. 26, pp. 989, 1082, 1196, and 1211. A similar Bill was brought in in the two succeeding sessions, but was ultimately rejected in the House of Lords, after a debate of some interest; Hansard's Parliamentary Debates, vol. 31, p. 157.

on the part of the Duke of Leeds in favor of the sitting members, and the Committee specially reported them to the House; yet still they declared the members duly elected. It would, indeed, be gross injustice to punish members for the acts of another person, with whom no connection was proved, and over whom they most probably have no influence.

The Committee resolved, that the sitting members were not duly elected; that the last election was void; that neither the petition nor the opposition to it appeared to be frivolous or vexatious; that it appeared to the Committee that bribery and treating prevailed previously to and during the last election for the borough of Hertford.

The following questions, as to the admissibility of evidence, arose in the course of the case:

The declarations before the revising barrister of certain persons, that they attended as the agents of the sitting members, are admissible as evidence of the subsequent agency of such persons.

A witness was called, who, after proving that certain persons took active parts at the court of the revising barristers, in making objections and supporting the claims of voters, was asked, whether they declared themselves to be the agents of Lord Ingestre and Lord Mahon, or of either party? this question was objected to, and after some discussion it was waived (*p*). A question was subsequently asked of the same witness, "Whether these persons stated in what capacity they appeared before the revising barrister (*q*)?" This was also objected to.

Mr. Harrison and Mr. Follett, in support of the objection:

There could be no candidate before the revising barristers, and, consequently, anything that passed there was irrelevant, and therefore inadmissible. Independently, however, of this objection, the declarations of a person who was not proved to be an agent, could not be evidence, until the agency was first proved. In the *Oxford case* the Committee had refused to allow the

(*p*) Printed Minutes, p. 8. (*q*) Ibid. p. 9.

counsel for the petitioner to examine witnesses as to what was done or said, in the absence of the sitting member, by third persons, before they had established their agency (*r*). If what any person did and said behind the backs of the sitting members were allowed to be given in evidence, no member's seat would be safe.

Mr. Joy, *contra:*

The question was put, with a view to show, in what capacity these persons professed to act at the barrister's court. A declaration accompanying an act is part of the transaction, and proof of any transaction was clearly admissible to prove the agency.

The Committee decided, that the question might be put. A declaration by an alleged agent at the hustings, that he attended as one of the check-clerks of the sitting members, was also admitted in evidence.

The seat not being claimed by the petitioners, the cross-examination of a witness as to an act of one of the petitioners is admissible, for the purpose of discrediting the witness, but not with the view of affecting the petitioner.

One of the witnesses for the petitioner, on cross-examination, admitted that after the election a man named Andrews, not a voter for the borough, was at his house, in company with Mr. Duncombe, the petitioner, and having said (*s*) that Andrews took his hat off and put it on the table, was asked, if anything was put into the hat. Mr. Joy objected to this question on two grounds, as being an inquiry into matter that happened after the election, and as being irrelevant, because the petitioner did not claim the seat for himself.

Mr. Follett:

As Mr. Duncombe did not claim the seat by the petition, it would not of course be allowable to go into evidence to prove bribery against him; but the object proposed by the question was, to show the manner in which the case was got up, and that money was offered to induce witnesses to give evidence. There was also a further and a very material object, the trying the testimony of the witness. He therefore insisted on his right to put the question.

(*r*) *Ante*, pp. 61, 62, 63.

(*s*) Printed Minutes, p. 15.

The Committee decided, that if the examination had for its object the impeachment of the witness's testimony, it might be put; but if it was for the purpose of trying the credibility of Andrews, or throwing doubts on his testimony, or the motives of the petitioners, that then the counsel for the sitting member was not at liberty to pursue the examination. The question was again asked, and the witness admitted that 5 *l.* was given to Andrews by him, and that he received the money from Mr. Duncombe.

Evidence of acts of bribery held to be admissible, after two arguments, before agency has been established.

A witness named Cozens (*t*) deposed to having been present when Lords Mahon and Ingestre canvassed his brother, accompanied by two persons named Longmore and Twaddle. After the sitting members had left his brother, Twaddle remained behind and solicited his brother's vote; and on being then asked, "What did Twaddle say when he canvassed your brother?" Mr. Follett objected to this question. On a subsequent occasion another witness was asked, what the same person had said to him, at a time when the sitting members were absent: Mr. Harrison objected to the question, and obtained permission to re-argue the point. The arguments in both cases were similar on each side; they have therefore been combined for the sake of brevity.

Mr. Harrison and Mr. Follett:

It is a clear principle of law and of common sense, that what a party says, is evidence against him; and on this ground any declaration of an agent is admitted, because, when the agency is proved, his declarations become the declarations of his employer. Criminal acts stand on precisely the same footing as declarations, and you are not allowed to give either criminal acts or declarations of an agent in evidence, until you have first laid a foundation for it, by establishing the agency. The ad-

(*t*) Printed Minutes, p. 24.

mission of such evidence could only lead to false conclusions. Whatever it may be the fashion to assert to the contrary, the rules of evidence are not founded on mere technical niceties, but on a plain principle of justice, not to admit testimony on which no just conclusion could be founded, as to the truth or falsehood of a charge. The late court-martial at Bristol affords a very good illustration of this proposition. That court admitted hearsay evidence, that the mayor hid himself: on this was founded the prosecution against him in the Court of King's Bench; and on the trial there it was proved, not only that he had not hid himself, but that he had conducted himself with great courage; and yet, from the admission of that evidence, the mayor for months suffered under an imputation of cowardice, which was utterly unfounded. It is not sufficient that a declaration or criminal act may be open to contradiction afterwards; the law gives no right to any one to cast imputations: an impression may be created, which, from the death of a witness, or some other circumstance, it may be totally out of the power of any one to remove. In Committees the same rules of evidence have been, and ought to be, followed as at law. The earlier cases before Committees had, indeed, been conflicting, but the balance of those authorities was in favor of the position contended for. In the *Herefordshire case* (*u*) the conduct of an alleged agent, and in the *Coventry case* (*v*) the declarations of the supposed agent were not allowed to be given in evidence, until their agency had been respectively proved. In the *Ivelchester case* (*w*) it was agreed between the counsel, that evidence of the declarations of voters, who had acknowledged themselves to be bribed, could only be admitted to affect the voters themselves, and not third persons; and the Committee in the *Worcester case* (*x*) admitted such evidence, as

(*u*) 1 Peck. 209.
(*v*) 1 Peck. 97.
(*w*) 3 Doug. 159.
(*x*) 3 Doug. 277.

against the voters themselves, so as to annul their votes, but not as against the sitting members, so as to disqualify them. The same principle prevailed in the *Hindon* (*y*), *Shaftesbury* (*z*), *Newark* (*a*), *Middlesex* (*b*), and *Oakhampton cases* (*c*). Of late years the practice has been invariably in accordance with that principle. It is very probable that individuals may be guilty of acts of criminality in a place where party spirit much prevails; yet it would be most unjust that the sitting member should be prejudiced by them. In the *Liverpool case* (*d*), where there was great corruption alleged, the Committee refused to go into evidence of it till Mr. Ewart was proved, on being told of the bribery that was going on, to have said, "I cannot help it, no election can be conducted without it." In the *Penryn* (*e*) *Pontefract* (*f*) and *Wells* (*g*) *cases* proof of agency was given. In the *Dublin case* the Committee resolved, that counsel should not pursue a train of examination to prove bribery until agency was established (*h*). The same was decided in the *Oxford* (*i*) and *Newry* (*k*) *cases* of this Session, where the Committees held, not only that you should not give evidence of what those, who canvassed with the sitting member, said when the sitting member was absent, but that you should not give evidence of what passed at the committee-room, if the sitting member was not present. It was of great importance that Committees should be guided in their proceedings by some uniform rule, and as the weight, both of cases at common law and of resolutions of Committees, were in favor of the position

(*y*) 1 Doug. 175.
(*z*) 2 Doug. 310.
(*a*) 3 Lud. 461.
(*b*) 2 Peck. 33.
(*c*) 1 Peck. 375.
(*d*) Printed Minutes, 1831. *See ante*, p. 161.
(*e*) Corb. & Dan. 61.
(*f*) Minutes, 10th March 1827.
(*g*) Minutes, 6th April 1827.
(*h*) Minutes, 24th Sept. 1831.
(*i*) *Ante*, pp. 61, 62.
(*k*) *Ante*, p. 156.

contended for, the rule they had established should be adhered to.

Mr. Joy and Mr. Rogers, for the petitioners:

The present question does not come within the rule contended for on the other side, for it is simply this, whether evidence can be given of the acts of those who canvassed with the sitting members? What Twaddle said was evidence of his having done certain acts, although it cannot, of course, be made use of against the sitting members, until some connexion has been shown between them and Twaddle. In the *Liverpool case*, in 1831, Mr. Ewart was held to be sufficiently connected with his committee, because some of his relatives were on it, to allow acts of bribery to be given in evidence. Here Twaddle has been proved to have canvassed with the sitting members, to have been with them at Rat's Castle, and at the revising barrister's court to have appeared to act as their agent (*l*). It is of course desirable to prove agency by innocent acts, where it can be done; but if this be not possible, resort may be had to acts of a mixed nature; and in the present case the proof of agency is so inseparably connected with the criminal acts, that the one cannot be shown without the other. In the *Shaftesbury case* the rule, that agency should be proved before acts of bribery, was not adhered to after the first day. In the *Ilchester* and *East Retford cases* (*m*), although the Committee decided, that no evidence of agency should be given in the first instance, yet that if this decision should be found inconvenient to either party, they considered themselves open to reverse it. In the *Dumfermling* (*n*) and *Bridgewater* (*o*) *cases*, the Committees allowed the acts of the agent to be given in evidence before

(*l*) His presence at the court was necessary, in his character of an overseer.

(*m*) 1 Peckwell, 476.

(*n*) 1 Peck. 15.

(*o*) 1 Peck. 102.

proof of their agency, on the supposition that evidence of these acts would be followed by proof that they were sanctioned by the sitting member. Unless, indeed, such a rule was admitted, it would be impossible to prove agency by one of the most ordinary methods, that the acts of the agent are acknowledged by the principal; for how could you show acknowledgment of an act unless you first proved that such an act had been committed? Nothing is more common or more advantageous to the public interest than for Committees (*p*) to make special reports against the persons committing bribery, although the members in whose favor they had done so retained their seats; yet, if the rule contended for on the opposite side was the correct one, this never could have been the case. It would be impossible ever to prove general corruption were such a rule persisted in. In the *Barnstaple case* (*q*) acts of bribery by the agent were admitted before any proof of his agency. This was a late case, in the remembrance of every one, and the beneficial effect which the admission of such evidence produced, by the exposure of a system of almost unparalleled corruption, would, it was to be hoped, influence the Committee in coming to a similar decision in the present, where an equally corrupt system was proposed to be proved.

Mr. Harrison, in reply:

In the *Liverpool case*, as given in the Minutes, evidence of declarations and criminal acts of agents was not admitted to affect Mr. Ewart, till what the Committee considered an acknowledgment, on the part of Mr. Ewart, of the agency had been first proved. With respect to the facts which have been relied on, the petitioners have not brought themselves within the prin-

(*p*) See *Newry case, ante*, p. 158. (*q*) C. & D. 193.

ciples of the decisions. Is the circumstance which has been proved here, of an elector going about with the candidate to canvass, any proof of his being an agent? If so, no election can be conducted with safety. This, however, is not the law. In the *Cirencester case* (r), Mr. Pytt's being a member of Mr. Beach, the sitting member's committee, was not held to be sufficient evidence of agency, so as to admit the proof of what Mr. Pytt said, in the absence of Mr. Beach, respecting the opening of the house of one Matthews, though Mr. Pytt was shown to have gone with the sitting member to the house of a voter, and to have introduced him. Here Twaddle was not on the Committee, and therefore the case, though parallel to the *Cirencester case*, is much stronger in favor of the rejection of the proposed evidence. In *Ridler* v. *Moore*, which had been cited on the other side, the sitting member's committee had a general authority to act for all lawful purposes, which was sufficient to render the sitting member answerable for their acts: where, however, the agent had a particular authority only, if he exceeded that authority, his principal was not bound by his illegal acts; *Durham case* (s). The rule which has been laid down is of importance even with the view of saving time, for a long train of evidence may otherwise be given of acts and declarations with which, in the end, it may turn out that the sitting members are not in any way connected.

The Chairman asked Mr. Harrison, if he would lay it down that no conversations or acts of individuals can be given in evidence, until you have connected the individual with the person to be affected by those acts. Mr. Harrison said, that conversations not in the presence of the candidate were not allowed until agency had first been proved; but that with regard to acts there was this difference: the agency is to be made

(r) 1 Peck. 467. (s) 2 Peck. 185.

but by acts, but that criminal acts are not allowed to be given in evidence till the connection with the candidate has been proved. The Chairman cited Mr. Rogers's book, to show that in some cases it may be allowed to give proof of acts before the agency is proved. Mr. Harrison said that Mr. Rogers's book was published before the cases decided in 1819 and 1820 were reported, and had not in it the cases in Corbett and Daniell, and that since 1820 there was no case where mere declarations or criminal acts had been admitted until the agency was proved.

The Committee, in each case, decided that the question objected to might be put to the witness.

On the examination of a witness named Harding, the Committee came to a similar decision with respect to a conversation between him and Dack; the ground insisted upon by the petitioners' counsel being, that he had connected Dack with the feast at Rat's Castle, and established the agency of Mr. Nicholson by his being at that feast, and thus connected Dack with the sitting members.

A person, who is summoned as a witness before a Committee, is entitled to payment or tender of his expenses, before he can be required to give evidence.

One of the witnesses in this case objected to giving his evidence before his expenses were paid. The Chairman sent to the officer who taxes the costs, to ask his opinion. The officer answered, that he had consulted the Speaker, and that it was a rule that a witness might claim to have his expenses paid or tendered before he could be compelled to give his evidence (*t*).

When a party had been actively engaged in distributing gifts to voters previously to an election,

Twaddle was proved to have given away divers articles of wearing apparel to several of the voters previously to the election. The banker's account of Messrs. Nicholson and Longmore had been produced, in which it appeared that there had been payments to Twaddle to the amount of 150 *l.* Mr. Longmore, who was examined as to these payments, said, that Twaddle was a client

(*t*) See *Norwich case, post.* 573.

and there appeared in the banking account of the agents for the sitting members (who were also also solicitors of the party) payments to him of different sums of money, which the agent stated to have been advances on a mortgage, further inquiry into the transaction was not permitted.

of his, and that the payment was money lent, without any reference to the election, for the amount of which he had taken a second mortgage from Twaddle. The counsel for the petitioners then asked, "What was the amount of the previous mortgage?" This question was objected to. The Committee decided that the question should not be put. The petitioners' counsel then asked, "Are the mortgages mortgages of the house in which he lives?" The Committee, without clearing the room, decided that the question should not be put.

Where a witness has been contradicted, it is not competent to the party calling him, after the defence has closed, to produce evidence in support of his testimony in a collateral matter.

On the closing of the case for the defence, before Mr. Follett summed up for the sitting members, Mr. Joy, for the petitioners, proposed to call further evidence to support the testimony of the witness, Thomas Russell Davis, who had been contradicted, by proving that he had been seen going to Mr. Nicholson's house, and had been charged with "ratting," in consequence. Mr. Follett opposed this, on the ground that it could not be done at *nisi prius*; the only instance in which evidence in reply was admissible being, when a collateral fact had been stated in contradiction, which could not have been expected to have been brought forward, and the contradicting of which would lead to the elucidation of the truth(*u*).

The Committee decided, that they would not allow the examination to be proceeded in(*x*).

(*u*) So, where a witness on a trial gives evidence against the interest of the party calling him, it is competent to such party to bring other witnesses, not to discredit him generally, but to contradict him on the fact to which he has deposed, if it be material to the issue; *Friedlander* v. *London Assurance Company*, 4 B. & Adol. 193; *contra*, if it be merely collateral, ibid.

(*x*) The resolutions of this Committee having been reported to the House, and the Minutes printed, Mr. Bernal (the Chairman), on the 24th of May, moved a resolution, "That the bribery and treating which prevailed previously to, and during, the last election for the borough of Hertford, require the most serious consideration of this House," in support of which he referred, among others, to the case of John Meed (printed Minutes, 177, 178),

a member of the Union, whose wife having, before Michaelmas 1832, lost seven sovereigns, and also a petition which her son had procured to be drawn up, was sent for by Dack some time before the election, and received from him a 5 *l.* note and two sovereigns, with a petition ready prepared, to which his own name, and those of Edward Laurence and Twaddle and four others were subscribed as contributors of 1 *l.* each. The resolution was carried, after a considerable debate, by a majority of 172; Ayes 227, Noes 55; and was followed by another, "That a Select Committee be appointed to consider and report upon the best mode of preventing bribery, treating and other corrupt practices, in all future elections for members to serve in Parliament for the borough of Hertford." On Mr. Pollock's name being read, as a member of the Select Committee, that gentleman begged to be excused from engaging in a *supposititious* inquiry, as did also another honourable member, upon which, on the suggestion of Mr. Bernal, the old Committee was re-appointed, of whom five were to be a quorum, and the writ was stayed. See Mirror of Parliament, 24th May 1833, pp. 1956 *et seq.* Leave to report the Minutes of this second Committee was given on the 27th June, Mirror of Parliament, 2588; and a bill was subsequently brought in to disfranchise the inhabitant householders under the old right, and to extend the limits of the borough, so as to comprise the parishes and hamlets of Ware, Amwell, St. Margaret, Broxbourn, with the hamlet of Hoddesdon, Bengoe, St. John's, Stapleford, Bramfield, St. Andrew, Hertingfordbury, Bayford and Little Berkhampstead, in which are situate 615 10*l.* houses, according to the survey of Captain Brandreth, R. E. annexed to the Report.

CASE XXXII.

CITY OF NORWICH.

The Committee was appointed on the 20th of March 1833, and consisted of the following Gentlemen:

Charles Shaw Lefevre, Esq., M.P. for North Hants, (*Chairman.*)

William Bingham Baring, Esq. M P. for Winchester.

John P. B. Chichester, Esq. M. P. for Barnstaple.

J. M. Galway, Esq. M. P. for Waterford County.

James Halse, Esq. M. P. for St. Ives.

Kedgwin Hoskins, Esq. M. P. for Herefordshire.

The O'Connor Don, M. P. for Roscommon County.

R. Pigott, Esq. M. P. for Bridgenorth.

W. Tayleure, Esq. M. P. for Bridgewater.

Glynne E. Welby, Esq. M. P. for Grantham.

Sir Henry Willoughby, Bart. M. P. for Newcastle-under-Lyne.

Petitioners:—Electors.

Sitting Members:—Sir James Scarlett and Lord Viscount Stormont.

Counsel for the Petitioners:—Mr. D. Pollock, Mr. Austin and Mr. Robinson.

Agents:—Mr. Austin and Mr. Colman, Norwich.

Counsel for the Sitting Members:—Mr. Harrison, Mr. Follett and Mr. Thesiger.

Agents:—Messrs. Sherwood & Thorpe, and Mr. Beckwith, Norwich.

THE petition in this case contained charges of bribery and treating, in the usual form, against the sitting members, at the last election, at which they and Richard Hanbury Gurney and Henry Bellenden Ker,

Esqrs., were candidates for the representation of the City of Norwich; it also contained a charge, that at the said last election a gross, open and extensive system of bribery and corruption was pursued and practised by certain persons desirous to obtain and procure the return of the said Viscount Stormont and Sir J. Scarlett, and that in consequence, in a great degree, of such gross, open and extensive bribery and corruption by the said persons, the said Viscount Stormont and Sir J. Scarlett had been returned; and it prayed that the election and return might be declared void.

Case of agency. *Semble*, that the employment of one attorney as the general agent of a candidate, is not proof of the agency of his partner.

In the early part of the case the principal object of the petitioners was, to establish that a Mr. Dye was the agent of the sitting members. It was proved that Mr. Dye was a solicitor in partnership with a Mr. Beckwith; that he had attended in the sheriff's room during both the days of the election, together with another attorney of the name of Palmer, and had attacked and defended disputed votes, during which time Sir J. Scarlett was seen in communication with him, and that on entering the room the first morning he had stated, that he attended on behalf of Lord Stormont and Sir J. Scarlett, but neither of them were present at this declaration. It was also proved that he had canvassed with one of the sitting members, and had attended and taken part in the business at the place called the Committee-room. Mr. Beckwith, his partner, had made out the notices of objection to voters in the opposite interest to that of the sitting members, in which he had employed three or four of his own clerks, had attended before the revising barristers and supported votes and objections on the side of the sitting members; and it appeared, that upon the illness of Mr. Alderman Francis, the sole conducting agent for the sitting members, he had taken the management of the business, and directed the payment of the necessary bills, at the committee-room, where he constantly attended, and examined the canvassing books, in

the presence of both the sitting members. He had also attended the sitting members to a meeting with the sheriffs, in order to sign an agreement for the payment of the expenses of the election, and afterwards appointed the check-clerks and visitors of the polling-booths. With regard to this place called a committee-room, there was considerable discussion, and some variance of testimony; ultimately it appeared, that a house belonging to Mr. Bignold had been lent to the Orange and Purple party who supported the sitting members, that there were in it a private room, which was occupied by Alderman Francis, and a public room to which all the members of the Orange and Purple party had access, and there a gentleman, who was chairman of the Orange and Purple Club, generally took the chair, and from thence he once issued an address, styling himself chairman of the committee for conducting the election for Lord Stormont and Sir J. Scarlett. It did not appear, however, that any regular committee was formed, and the existence of it was, in a subsequent stage of the proceedings, denied by Alderman Francis, although he admitted that the assemblage at this house was generally called the committee. The canvassing books were brought to the public room and inspected by the persons who met there, and lists were afterwards formed from them by clerks in the employment of Alderman Francis. The question of the agency of Mr. Dye was debated several times at different stages of the proofs, the arguments have consequently been combined.

Mr. Pollock and Mr. Austin:

It is impossible ever to prove an express authority from a candidate to an agent, for it would be madness for any person in such a situation to give one. The proof must, therefore, be established by a variety of acts of the supposed agent, no one of which, taken by itself, would probably be sufficient to form a judgment from, but the whole

of which, when joined together, must carry conviction. When agency is once established, although the agent may have been created for only innocent purposes, yet his criminal acts, notwithstanding they may have been done without the knowledge or privity of his principal, will avoid the election; *Felton* v. *Easthope* (*a*). Admitting, therefore, the law as laid down in the *Dunfermling case* (*b*), that the mere declaration of a man, that he is an agent, will not make him so, and the correctness of the decision of the Committee in the *Cirencester case* (*c*), that the being only a member of a candidate's committee, and introducing him to a single voter, was not sufficient proof of agency, the question here is, whether, coupling together the whole of the acts of Mr. Dye that have been put in proof, a case of agency has not been established against him. In many cases much weaker proof of agency has been received by Committees; *Penryn case* (*d*); *Cricklade case* (*e*). In the *New Windsor case* (*f*) an attorney who had merely canvassed with a candidate, and paid the expenses of entertaining the voters at one house, was held an agent. If, however, a doubt should exist as to the acts proved against Mr. Dye, those which were established against his partner, Mr. Beckwith, ought to be taken into consideration. From Mr. Beckwith's general management of the books at the committee-room, and payment of the bills, no doubt could exist as to his general agency; and from his attendance to settle with the sheriffs the agreement as to the payment of the expenses, and in the sheriffs room with Dye and Sir J. Scarlett, on the first day of the election, his professional agency must also be presumed. It is a necessary inference from the employment of the clerks of the firm of Beckwith & Dye,

(*a*) Rogers on Elections, p. 220.
(*b*) 1 Peck, 9.
(*c*) 1 Peck, 467.
(*d*) Corb. & Dan. 13, 63.
(*e*) Petrie, 1; Orme, 218.
(*f*) 2 Peck, 194.

that both the partners were equally engaged in a common employment, and the acts of the one may be used to show the employment of the other. It must be recollected, that where the greatest corruption has prevailed, it is always most difficult to prove an express authority to agents; like practised actors, each man knows his cue, and plays his part without the aid of a prompter.

Mr. Thessiger and Mr. Follett:

There was no proof, as in the *New Windsor case*, of Mr. Dye having paid a bill of the sitting members; still less was there proof of his having introduced the sitting members to voters, or of any declaration by him that he had brought them down, as in the *Penryn case*. In the *Mitchell case* (*g*), where it was proved, that a person had canvassed in company with the sitting member, that he was steward to the nobleman on whose interest the member stood, and that he resided during the election, together with the member, in the house of the agent of that nobleman, the Committee held that his agency was not proved. These were surely stronger facts, than any that had been established against Mr. Dye. In the *Oxford case* of this session (*h*), the Committee refused to receive evidence of what passed in the committee-room, without previous proof being given of the agency of the parties concerned. The admittance of Mr. Dye into a room open to all the members of his party ought not, therefore, according to precedent, to be construed into an act of agency. Had he even been a member of a committee, he would not by that have been constituted an agent, according to the principles laid down in the *Cirencester case* (*i*). The mere assertion that he was an

(*g*) 3 Luders, 83. (*h*) *Ante*, p. 61. (*i*) 1 Peck. 467.

agent would not make him so, according to the rule established by the *Dumfermling case* (*k*). The disputing of votes in the sheriffs room, at the election, which might have been done by any active partisan, without any authority, could hardly be taken as sufficient to render him such an agent as would make the sitting members responsible for his acts; he merely acted as a counsel would do for the particular occasion. The acts of Mr. Beckwith, even if it were conceded that he was an agent, ought not to be taken into consideration when the question was as to the agency of Dye; because one attorney was employed, it by no means followed that another must be also. The Committee ought not to assume any communication at all between these two persons, for their conversations, had it been attempted to prove them, would not be evidence until the agency of one of them was established.

The Committee determined that, as yet, there was no proof of agency against Mr. Dye.

March 26, 27. Question of agency.

On a subsequent day it was proved, that a person of the name of Newton canvassed the witness in company with Lord Stormont and the son of Sir J. Scarlett. Mr. Robinson then proposed to ask the witness, what had passed between him and Newton on a subsequent occasion. Mr. Harrison objected to the question. Mr. Robinson supported it, and cited the *Cricklade case* (*l*); and after hearing Mr. Harrison in reply, the Committee determined that the question might be put. The witness then deposed to Newton's bargaining with him for his vote for 5 *l.*, which he afterwards sent him by a third person. The witness carried the money to the committee-room of the opposite party, for whom he eventually voted. Another witness proved an offer from Newton to a voter of 5 *l.* for his vote, which was declined because he wanted 10 *l.* This man afterwards voted for the sitting members.

(*k*) 1 Peck. 9. (*l*) Petrie's *Cricklade case.*

Another witness proved an offer from Newton of 5 *l.* for his vote, which he declined.

Evidence of general bribery is not admissible until agency has been proved.

Upon a witness of the name of Minns being called, Mr. Pollock stated, that his object was to go into proof of a system of extensive bribery without previously proving agency, and he submitted that he was entitled to go into it, or else the resolution of the House of this session (*m*) would be entirely nugatory, and he referred to the *Newry* and *Liverpool* (*n*) cases, where evidence of general bribery was let in, although in one case the seat was not affected, and in the other no special report was made against the sitting member, although he was deprived of his seat.

Mr. Follett, on the other side, contended that no inquiry into a general system of bribery, unconnected with the sitting members, ought to be prosecuted at their expense, and at any rate not without some person being empowered to attend the Committee on the part of the City of Norwich, which would be deeply and principally interested in such an inquiry. In the *Newry case* a *primâ facie* case of agency had been established, although it must be presumed from the decision of the Committee, that they considered it to have been subsequently rebutted; in the *Liverpool case* the knowledge by the sitting member during the election of bribery being carried on was distinctly proved. The Committee resolved, that the counsel for the petitioners be not allowed to go into evidence of general bribery in the City of Norwich, without proof of agency in the first instance.

Canvassing with the sitting members is not sufficient proof of agency.

Upon a subsequent occasion it was proved that two persons of the name of Gedge and Steele were seen canvassing with the sitting members; Mr. Robinson then proposed to ask the witness, what these individuals said to him. Mr. Follett objected to the question, on the ground that their agency had not been proved, and cited the *Cirencester*, *Mitchell* and *Durham* (*o*) cases. Mr.

(*m*) See *ante*, p. 64. (*n*) Printed Minutes, 1831. (*o*) 2 Peck. 185.

Austin, in reply, cited the *Cricklade case.* The Committee determined, that the question could not be put; and in consequence of an inquiry of Mr. Pollock, they informed him on the following morning, that they had come to a resolution, "That the petitioners be not allowed at any future time to go into the general bribery without previous proof of agency on the part of the person bribing, and that the decision of the Committee yesterday was final upon that point." Mr. Pollock then stated, that the parties who instructed him were exceedingly anxious, that after they had concluded all matters affecting the sitting members, as a matter of form they should tender a witness on the case of general bribery, without attempting to re-argue the question. To this request the Committee acceded, and a witness was accordingly tendered at the close of the petitioners' case, and on being objected to, was immediately withdrawn.

Canvassing frequently in company with one of the sitting members, and paying a bill for beer drank by voters at a house in their interest, held to be sufficient proof of agency: but the last fact rejected as proof of treating.

The agency of a person of the name of Grimmer was subsequently considered by the Committee to have been proved, on evidence of his having frequently canvassed in company with one of the sitting members, and having paid one bill for beer which had been drank at one of the public-houses in the sitting members interest; this latter fact, after a long discussion, having been permitted to be proved as an act of agency, but not as an act of treating. Several acts of bribery were then proved against Grimmer and persons employed by him.

Against Sir J. Scarlett himself, evidence was brought of his having purchased the discharge from the army of the son of a voter of the name of Hornigold. The witnesses on the part of the petitioners, who consisted of the voter, his son and a brother-in-law, swore positively to circumstances from which a bargain might be inferred on the part of Sir James and his son, whom he had left in Norwich to conduct the election for him in his absence, that the son's discharge should be procured

on condition that his father and two brothers-in-law should vote for the sitting members. The principal part of these circumstances were afterwards contradicted, and it was shown that the two Hornigolds voted for Messrs. Gurney and Ker. A letter from Sir J. Scarlett to the voter was put in. It was in these terms:

"New-street, Dec. 1st, 1832.

"Sir, I am happy to inform you, that I have been able to procure the discharge of your son from the 96th regiment, upon repayment of the expenses which have been incurred. The amount is five pounds, which you will have to pay. I will advance the money for you in the meantime, and hope you will have a happy meeting with your son.

"Yours, &c. &c.

"J. SCARLETT."

"*P.S.* I have just seen your son, who will leave town on Monday. I have given him 3*s.* 6*d.* to pay his expenses till then, and he will have 9*s.* for his journey."

Mr. Alderman Francis was afterwards called, who deposed that he was the sole authorized conducting agent of the election on the part of the sitting members, and that he had never given any authority whatever to either Newton or Grimmer to act for them; and evidence to the same effect was given by Mr. Scarlett. On the cross-examination of Alderman Francis, it appeared that he had given a written promise, on the 21st of August, to Hornigold, to procure his daughter a turn in the Hospital-school. This he said he had given in order to obtain his vote at the sheriffs election, which took place on the 28th of August, and without any reference to the election of Members of Parliament.

The Committee determined, that the sitting members were duly elected, and that neither the petition, nor the opposition to it, appeared to be frivolous or vexatious.

A witness summoned on a Speaker's warrant can only require, previously to giving evidence, payment of the expenses necessary to enable him to appear before the Committee, all other expenses being the subject of taxation afterwards.

At the commencement of the proceedings in this case two of the witnesses refused to give evidence until their expenses had been paid, of which they offered accounts, including large charges for their loss of time and absence from their professional duties, and they relied upon a reference which had been made to the Speaker in the *Hertford case*, in which he had given his opinion, that the expenses ought to be paid before a witness could be called upon to give evidence. To obviate this difficulty, one of the petitioners drew drafts upon his bankers for the amount of these accounts, which it was agreed should be deposited with the clerk at the Recognizance-office until the accounts had been taxed. The clerk refused, however, to receive these drafts, and upon a fresh reference to the Speaker, he declared, that his former opinion had been misunderstood, that all he conceived a witness could demand before he gave testimony, was payment of his necessary expenses to enable him to come up to the Committee, and that all other expenses were the subject of taxation afterwards, the witness being fully protected against all refusal of any just demands by the 60th, 61st, 62d and 63d sections of the 9 Geo. 4, c. 22. Upon this communication having been made by the clerk of the Committee, the drafts of the petitioner were returned to him.

CASE XXXIII.

CITY OF BRISTOL.

The Committee was appointed on the 25th of April 1833, and consisted of the following Gentlemen:

John Wilson Patten, Esq. M. P. for North Lancashire, (*Chairman*).

Robert Torrens, Esq. M.P. for Bolton-le-Moors.
Henry Halford, Esq. M.P. for South Leicestershire.
Edward Hamlyn Adams, Esq. M.P. for Caermarthenshire.
James Talbot, Esq. M. P. for Athlone.
Christopher Fitzsimon, Esq. M. P. for Dublin County.
John Dunlop, Esq. M. P. for Kilmarnock.
The Marquis of Blandford, M. P. for New Woodstock.
Charles O'Connell, Esq. M.P. for County Kerry.
James Haughton Langston, Esq. M. P. for Oxford City.
Sir John Dugdale Astley, Bart. M. P. for North Wiltshire.

Petitioners:—Electors.

Sitting Members:—Sir Richard R. Vyvyan, Bart. and James Evan Baillie, Esq.

Counsel for the Petitioners:—The Hon. C. E. Law, Mr. D. Pollock and Mr. Rushton.

Agents:—Messrs. Cary and Cross.

Counsel for the Sitting Members:—Mr. Harrison, Mr. Follett and Mr. Thesiger.

Agents:—for Sir R. Vyvyan, Messrs. Martineau & Malton, and for Mr. Baillie, Messrs. Vizard & Leman.

The petition states general bribery.

THE petition alleged, *inter alia*, that at the last election for members to represent the City of *Bristol* in Parliament, a gross, open, and extensive system of bribery and

corruption was pursued by certain persons desirous to obtain and procure the return of Sir Richard Rawlinson Vyvyan and James Evan Baillie, Esq., to serve in Parliament for the said city. It also alleged acts of bribery and treating on the part of the sitting members, their agents, friends and managers, and of persons employed or acting on their behalf, before and at and during the time of the election, and that a colorable majority was, "by the several illegal ways and means aforesaid," obtained for the sitting members. It prayed, that the election of the sitting members might be avoided, and that Edward Protheroe the younger, and John Williams, Esqrs., the other candidates, might be declared duly elected.

It appeared by the evidence, that in the month of October 1832 a club was formed in *Bristol*, under the name of the Conservative Operative Association, the honorary members of which subscribed each 5*s*. towards its establishment. The ordinary members were freemen of the city. The club was managed by a committee chosen from the members at large. On application for admission, it was necessary that the applicant should produce a copy of his admission as a freeman, which was then marked with the letter (S), the initial letter of the treasurer's name, and the freeman being registered received a tin ticket, which enabled him to get another which might be exchanged at certain public-houses for meat or drink to the value of 6*d*. The rules of the club were put in, from which it appeared that 150 of the wives of the members were to receive each, on the birth of a child, the sum of half-a-guinea, and that employment was to be found for members out of work. By the 18th rule it was provided, that on sufficient evidence being given that a member was not of conservative principles, he was no longer to continue a member of the association. There were large meetings of

the association held, either nightly or monthly, at different public-houses, from the latter end of September till within a few days of the election. The members of the association signed an address to Sir Richard Vyvyan, requesting him to offer himself as a candidate, which was presented to him at the White Lion Inn in Bristol.

The proceedings of a club with reference to the election may be given in evidence.

When this evidence was first proposed to be given, Mr. Harrison insisted, that unless it could be shown that Sir Richard Vyvyan was connected with a club at Bristol, no proof of the existence of that club could be permitted. The petitioners not having delivered in a list of voters whom they propose to prove to have been bribed, must proceed on the general law to affect the seat of Sir Richard Vyvyan, by showing that he was, by himself or his agents, privy to the alleged corruption. The *Liverpool*, (*a*), *Herefordshire* (*b*), *Maidstone* (*c*), *Chester* (*d*), *Penryn* (*e*), and *Newry* (*f*) cases were cited.

Mr. Pollock:

The petitioners are in the course of proving the existence of a club, which is afterwards to be connected with the sitting members. This they are entitled to do: *East Retford case* (*g*), *Bristol case* (*h*). Here the club had conspired to secure the return of the sitting members by bribery and corruption. The fact of conspiracy once established, evidence of who were the accomplices at the time is admissible: *Rogers on Election Committees* (*i*). The *Newry case* is in favor of the petitioners.

The Committee resolved, That the counsel for the petitioners be allowed to give evidence of the proceedings of a conservative club at Bristol.

(*a*) Printed Minutes, 1831.
(*b*) 1 Peckw. 209.
(*c*) Minutes, 12th Feb. 1807.
(*d*) Corb. & Dan. 68.
(*e*) Minutes, 28th Feb. 1827.
(*f*) Ante, p. 153.
(*g*) Minutes, 5th April 1827.
(*h*) 1 Dougl. 280.
(*i*) pp. 277, 278.

On a witness being examined as to certain arrangements made with respect to the day of nomination at the Sugar Loaf Inn,

Mr. Follett:

27th April. The Acts of a society are not to affect the sitting members, until their connection with it is distinctly proved; but evidence of those acts is admissible with a view to enable the Committee to make a special report.

The resolution of yesterday does not authorize the giving of evidence of proceedings with respect to the nomination. An intention is now distinctly avowed by the counsel on the other side to prove bribery, a proof which he cannot go into, without first connecting the sitting members with it. The objection raised upon which the resolution of the Committee was founded, was simply whether evidence might be given of the formation of a conservative club, as had been allowed in the *Newry case* (*k*), and Mr. Harrison was interrupted by a member of the Committee, who told him, that he was quoting authorities to show, that agency must be proved before bribery, which was not then the question under discussion. Now the question of bribery and treating has been raised, and if decided against the sitting members, their seats will be vacated. If any voters were bribed, their votes may be struck off on scrutiny; and thus if the majority were bribed, the election may be rendered useless to the sitting members; the question is not, however, whether the majority has been obtained by bribery, but whether any one person has been bribed by the sitting members or their agents. There is indeed an allegation in the petition of general bribery, but the Committee are not entitled, under the Grenville Act, to try that question apart from any connection with the sitting members. Such evidence has been rejected by the *Norwich* Committee of this session (*l*), and has never been allowed by any Committee; for in the *Liverpool case* (*m*), Mr. Ewart was held to be connected with the bribery practised at that election by his declaration at the hustings. It is also not receivable in a court of

(*k*) Ante, p. 151. (*l*) Ante, p. 570.
(*m*) Printed Minutes, 1831.

law; *Starkie on Evidence*(*n*). The acts even of a committee are not allowed to be given in evidence until proof is given to connect the sitting member with it; *Oxford case*(*o*). All the authorities from 1819 to the present time(*p*) were in accordance with that decision. Indeed if the rule were not as there laid down, no seat would be safe, as any person might be put in jeopardy by others unconnected with him making such an arrangement as that which was sought to be established by evidence.

The Hon. C. E. Law:

We are not seeking to connect the sitting members with any act, but we desire to show a conspiracy to corrupt votes to the number of 1,000. The petition contains an allegation of general corruption, to sustain which by proof it is desired to proceed with the examination. A similar allegation was introduced into the *Liverpool*(*q*) petition, and Mr. Ewart was unseated because of the general bribery at that election. Many of the provisions of the Grenville Act have been transferred to the 9 Geo. 4, c. 22, some parts of which are directory only. The House of Commons, however, is not divested by it of the power which it previously exercised. In the *Nottingham case*(*r*), the sitting member, though not implicated in the riots, lost his seat because they had prevailed to such an extent as to affect the freedom of election. This case is referred to by Mr. Rogers (*s*), as one of the instances in which an innocent party may suffer. The *Ilchester case* is also in point (*t*). It is

(*n*) Vol. 2, p. 24, 2d edition; and see 1 Phillipps on Evidence, 97, *et seq.* and cases there cited; and *Fairlie* v. *Hastings*, 10 Ves. 128, judgment of Sir W. Grant, *Bank of Scotland* v. *Watson*, 1 Dow. 40, and ibid 45, 49; *Lord Melville's case*, 29 Howell St. Tr. 746-763; *Wagstaff* v. *Wilson*, 4 B. & Adol. 339.

(*o*) Ante, p. 61.

(*p*) See note to the *Newry case*, ante pp. 159, 160, 161; and the *Durham case*, Minutes, 6th March 1831; *Great Grimsby case*, Minutes, 13th July 1831.

(*q*) Printed Minutes, 1831.

(*r*) 1 Peck. 85

(*s*) Rogers on Election Committees, p. 278.

(*t*) 1 Peck. 303.

said, if voters have been bribed, their votes may be struck off on scrutiny: this was true where it is proposed to strike off only a few votes, but here the objection applies to 1,000, and we were not possessed of sufficient information to state the names of the parties in our list of objections. It is said also that the uniform practice is, that agency must be first proved. It is to be hoped, however, that the practice of the House will bend to circumstances, and that parties will not, by the strict enforcement of this rule, be excluded from an inquiry, the result of which may be to show an enormous extent of corruption, where they may be enabled to establish the fact of adoption subsequently. For the sake of argument, however, we withdraw the suggestion that we shall bring home the corruption to Sir Richard Vyvyan.

Mr. Follett in reply:

In the *Newry* and *Liverpool* cases the corruption was great, and in the latter also notorious; but in each case, whenever a question was put in order to prove bribery against a person or class of persons either, without previous proof of agency, it was over-ruled. In the *Ilchester case* certain votes were proved to be bribed, and these votes were struck off the poll. A Bill is now before Parliament to enable Committees to try a question of general corruption where the sitting member is not connected with it (*u*). This has not yet become the law; when it has, Committees will proceed upon it. Let the present cause, however, be conducted like any other in which character and deep interests are concerned. The ground of the decision in the *Nottingham* case was, that the riots had affected the poll, otherwise the seat, as in the *Coventry* cases of 1827 and of this session, would not have been avoided. We put the case on the established practice, on the law of Parliament, of

(*u*) This Bill is among those postponed to the next Session.

common sense and of justice, that persons are not to be affected with the consequences of acts, until they are shown to be connected with the acts themselves.

The Committee came to the following resolution: "The Committee, judging from former precedents, will not allow any act of the Operative Conservative Society to affect the sitting members, unless their connection be distinctly proved. They are, however, perfectly willing to hear any evidence that can be adduced in order to prove that this society has or has not exercised an undue influence at the last election for the City of Bristol (*x*), with a view to enable the Committee to make a special report."

The counsel for the petitioners suggesting that he might be enabled to connect the sitting members with a society, by adoption of the acts of that body, is at liberty to proceed with the whole case.

Mr. Harrison then submitted, that as the case had been separated, the petitioners should proceed first to their case against the sitting members, in order that they might receive no prejudice by delay.

Mr. Law objected to this course, and in answer to a question from the Committee, as to whether he could connect the society with the sitting members, said, he might be enabled to show adoption, which usually was all that could be shown in cases where, as in that instance, the candidate had been previously a stranger to the place.

The Committee then resolved, that the petitioners do proceed with their case.

Evidence was then given of arrangements made by the committee of the Conservative Operative Association for a meeting on the morning of the day of nomination, in St. James's Churchyard, Bristol, at the hour of six. The committee were previously to meet

(*x*) In consequence of this resolution the Committee refused to admit evidence of declarations made by a member of the society after the poll had finally closed. They also resolved, that they would not receive proof of the declarations of persons, themselves competent witnesses, who had not been summoned; and in one instance though proof was offered of endeavours made to find the party (Mr. Purnell), to serve him with the Speaker's warrant, the proof not being satisfactory. In the *Sudbury case*, 2 Dougl. 172, a similar suggestion as to one Delaude was held insufficient to let in evidence of a conversation with him.

the members, and to inform them that each man who went to the nomination should receive 3 *s.* On the day in question the members assembled in St. James's Churchyard, in different bodies, to the number of 900 in all, each headed by one of the committee. They received each a card, with the letters C. K., meaning "Church and King," printed on it, and the initials W. B. (Wm. Betts) in writing, which they were told to take care of, or they would not be paid for their day's work. These bodies of men attended the nomination, and were occupied altogether nine hours, *i. e.* from six in the morning until three in the afternoon. The cards were exchanged in the evening for 3 *s.*, or 2 *s.* 6 *d.* and a pot of beer, at different public-houses, the money for the purpose being proved, in some instances, to have been supplied by a Mr. Sircom, the treasurer of the society, who was shown to have ordered the printing, at different times, of 2,300 copies of the rules, and to have recommended, at the committee-room of the society, a promise of 10 *s.* 6 *d.* polling-money, of the payment of which no evidence was however adduced. After the examination of five witnesses the Committee expressed their desire that Mr. Law should first bring those witnesses who would show a connection between the society and the sitting members. Mr. Law stated, that he proposed to show, by recognition and by funds supplied, that Mr. Alderman Daniel was an agent of Sir Richard Vyvyan.

Further evidence was then gone into, to prove the gift of refreshment-tickets to the value of 1 *s.* or 2 *s.* each to voters, at a house, No. 8, King Street, during the two days of polling, and on the day after the poll closed. On these three days it was stated that from 1,000 to 1,200 persons received tickets, through a part of a window from which a pane of glass had been removed, and a wooden slide substituted for it. Evidence was adduced of some persons stating there that they had voted for Sir R. Vyvyan and Mr. Baillie, and handing in the

copies of their admissions as freemen; others their names on printed slips of paper (part of the register), and having them returned to them with tickets, which they took to different public-houses.

Mr. Alderman Dániel, when called, rebutted the fact of his agency. He stated, that a committee of the principal merchants and gentlemen in Bristol had been formed, for the purpose of promoting the conservative interest, of which he was the chairman, and towards the expenses of which he had himself subscribed 200 *l.*, though he personally took no part in the details of the proceedings adopted by it; and that this committee was originally appointed, and continued to act throughout, perfectly independent of Sir Richard Vyvyan, and of his agents. In the course of his examination, the Committee refused to permit him to read, or to give parol evidence of printed placards which had been posted up in Bristol, recommending reformers not to deal with any tradesmen who were not of their party, though he stated his conduct in a particular transaction to have been influenced by that recommendation.

Parol evidence may not be given of a document which is capable of being produced, though it may have influenced the witness's conduct in a transaction, as to which he had been examined.

The counsel for the petitioners on this day (May 2d) abandoned their case (*y*).

The Committee resolved, "That Sir R. R. Vyvyan and James Evan Baillie, Esquire, were duly elected citizens to serve in Parliament for the city of Bristol, and that neither the petition nor the opposition to it appeared to be frivolous or vexatious."

(*y*) On the 21st of May a petition was presented to the House by Mr. Warburton, signed by 2,500 persons, alleging that gross corruption had prevailed at the last election for Bristol. This gave rise to a debate, (see Mirror of Parliament, May 21, pp. 1910, 1911), in which the circumstances under which the petitioners abandoned their case were explained at some length by Sir Richard Vyvyan, who stated that the petitioners had summoned Mr. Sircom, the treasurer of the Conservative Operative Association, though they did not call him. The petition was ordered to lie on the table. The Minutes of Evidence were ordered to be laid before the House, after a division, by a majority of 34; Ayes 42, Noes 8.—Mirror of Parliament, May 21, 1833, p. 1914.

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for two days during seven hours the first day, and eight hours the second, but not later than four o'clock on the second day, 2 Will. 4, c. 45, ss. 62. 67.
in Ireland,
for five days at the most, to close at or before five o'clock on the fifth day, 2 & 3 Will. 4, c. 88, s. 52, to be open from nine in the morning, except on the first day of polling, until six in the afternoon, except on the last day of polling, between the 15th of April and the 15th of September; and from nine in the morning, except on the first day of polling, until five in the afternoon, except on the last day of polling, between the 15th of September and the 15th of April (60 Geo. 3, and 1 Geo. 4, c. 11, s. 19); the provisions of the 4 Geo. 4, c. 55, s. 64, being repealed, *semble*, by section 52 and 62 of the 2 & 3 Will. 4, c. 88; 356.

POLL—*continued.*
the continuance and duration of the poll;
in Scotland,
for two days, from nine o'clock in the morning until four o'clock in the afternoon on the first day, and from eight o'clock in the morning until four o'clock in the afternoon on the second day.
declaration of the numbers on the poll;
in England,
in counties, on the day next but one after the close of the election, unless that day be Sunday, then on the Monday following; proclamation to be made of the members chosen not later than two o'clock in the afternoon; 2 Will. 4, c. 45, s. 65.
in boroughs, on the next day after the election, unless that day be Sunday, then on the Monday following; proclamation to be made of the member chosen not later than two o'clock in the afternoon, unless the returning officer shall think fit to declare the state of the poll, and to make the return immediately after the lawful close of the poll; 2 Will. 4, c. 45. s. 68.
in Ireland,
immediately after the final close of the poll, 2 & 3 Will. 4. c. 88, s. 52.
in Scotland,
on the day next but one after the close of the poll, unless such day shall be Sunday, then on the Monday following; proclamation to be made of the members chosen not later than two o'clock in the afternoon; 2 & 3 Will. 4, c. 65, s. 33.
delivered (in counties) to the clerk of the peace, 100, note (*c*).
how far conclusive as to what appears on the face of it, 262; 2 Peck. 348. See *Evidence*.
must be in writing, *semble*, 2 Will. 4, c. 45, ss. 59, 68.
may be explained by evidence;
where no entry of a tender has been made, evidence is admissible in proof of the fact, 262.
of evidence to correct the poll;
testimony of the voter, rejected, 254, 263. S. P. 2 Peck. 134.
other evidence is admissible, 262.
must be produced in the first instance before the Committee, 97. 243.
received, where produced by the person in whose custody it is, 507; although (in a borough) it has not been delivered to the chamberlain having the custody of the records, but has been kept by the returning officer after making the usual affidavit (1 Geo. 4, c. 11, s. 3,) until its production before the Committee, 507; although it has not been delivered to the town clerk but to the clerk of the peace, and that not within the time limited, 426.
not received, where the books had been deposited with the town

POLL—*continued.*
clerk, the deputy of the recorder, and the town clerk was not called to authenticate them, 467.
the best evidence, who were candidates at the election, 102. S. P. 1 Peck. 490.
poll of a former election produced as evidence of who voted thereat. See *Evidence. Committee. Returning Officer.*

POLL-BOOKS, produced before a Committee by the person in whose actual custody they are, 507. See *Evidence.*
for a borough received in evidence notwithstanding erasures, 102; though for two hours out of the custody of the town clerk, under the inspection of the sitting member's agent, in the presence only of a clerk, 116; though not delivered over, 507; S. P. 1 Peck. 209; to the proper officer, 426; within the time limited, ib.; not received, under the circumstances, until authenticated by a poll clerk, 101; so where they could not be authenticated, 467.

POLL-CLERK,
if he has not taken the oath required by 25 Geo. 3, c. 84, such omission will not avoid the election, 369.
if he has omitted to enter the residences of the voters, as required by 10 Anne, c. 23, s. 5, such neglect will not affect the votes, 370.

POOR'S RATE. See *Reform Act,* (English). *Scot and Lot.*
payment of subsequent rates to another overseer, and the oath of the voter that he had paid all rates due; held sufficient proof of payment of prior rates, although the overseer whose duty it was to collect such rates, swore that he had not received them, 265.

PRESUMPTION. See *Fraud. Voter.*

PROBATIVE DEEDS,
instances of them, 282. 292.
made evidence before Committees by the 25th section of the 2 & 3 Will. 4, c. 65 (Scotch Reform Act), 282.

PROPRIETOR. See *Register of Votes. Voter.*

QUALIFICATION, of Candidate. See *Candidate. Devise. Petitioner. Sitting Member.*
a grant of a rent-charge of 300 *l.* "to be from thenceforth payable," by equal half-yearly payments, on the 10th of June and the 10th of December, which was executed on the 10th of December and re-executed on the 12th, and the consideration money for which was subsequently paid in the presence of one witness only, held a sufficient qualification on the 10th of December (the day of nomination), 23.
change of. See *Voter.*
of electors. See *Electors,* disqualification of.
of electors in Scotch counties, &c. See *Scotland.*

QUESTIONS, argued separately, by desire of the Committee. See *Committee.*

RATE-BOOK, is conclusive evidence on the question of whether rated or not, 205.

RECOGNIZANCES, to be entered into within 14 days after presenting the petition, 9 Geo. 4, c. 22, s. 5; time enlarged where one of the sureties, who was to have entered into them the next day, was subpœnaed on a trial at the Carmarthen assizes, 424 n.; where the recognizances had been executed and transmitted, under cover, to the Speaker, but had miscarried, ib.; where there were two petitions, one from electors, the other from a candidate, and the agent having provided sureties only on the petition of the candidate, had given the names of the same sureties on the other, and an objection to this had been made by one of the sureties at the Examiner's Office, ib.; not, where the delay arose from the agent of the petitioners, who was personally unacquainted with the sureties, having failed to ascertain the fact of their attendance, though one of them was in the lobby, and the other in one of the offices of the House, ib.

RECORDER. See *Corporation Books. Notice.*

REFORM ACT (English). See *Committee. Evidence. Fraud. Lists of Voters. Occupation. Poll. Statutes. Tender. Voter.*

a few of the questions which have presented themselves on various sections of it:

as to county votes;

section 18;

whether the "tenements" must necessarily be of such a nature as to be capable of occupation, even though acquired by marriage, marriage settlement, &c., or though of the clear annual value of 10 *l.*? as, for instance, whether a rent-charge for life of 10 *l.* a year, granted subsequently to the 7th of June 1832, would entitle its possessor to be registered? 3.

sections 18 & 26;

whether annuities need now be registered with the clerk of the peace, according to the provisions of the 3 Geo. 3, c. 24? 4.

section 20;

whether the following persons are entitled to be registered as county voters? the lessee or assignee of several terms, originally of 60 years, in premises together of the annual value of 10 *l.*, or of several terms originally of 20 years, in premises originally of the annual value of 50 *l.*? 5.

the occupier under several holdings, of lands at rents, amounting together to 50 *l.*? ib.

an occupant of a farm at a *bonâ fide* rent of 50 *l.*, who lets off a portion of it? 6.

or whether such an occupation would give him the right of voting, as would, previously to the passing of the 59 Geo. 3, c. 50, have entitled him to a settlement in the parish as an occupier or person coming to settle upon a tenement of the yearly value of more than 10 *l.*, under the 13 & 14 Car. 2, s. 12? ib.

REFORM ACT (English), Section 20—*continued.*
as to county votes;
a tenant who underlets only a small portion of the property demised, and remains in possession of what is evidently worth more than 50 *l.* per annum, as where the tenant holds land at a rent of 54 *l.* and lets off part at a rent of 4 *l.*? 6.
two or more tenants of a farm, liable jointly and severally to the payment of a rent of 50 *l.*; or whether the amount of rent must be divided by the number of tenants? ib.
a partner with a tenant, at a rent of 100 *l.* a year, who occupies the premises jointly with the tenant, and allows him 50 *l.* annually in the partnership accounts, but is not liable *to the landlord* for the rent? ib.
whether the words "above all rents and charges" are applicable to fines paid for renewals of leases for lives? and if so, in what manner the fine is to be deducted from the annual value? 6, 7.
sections 23 & 26;
whether trustees not having any beneficial interest, but who have been in possession, or in the receipt of the rents and profits for six calendar months previously to the 31st of July in the year of registration, are entitled to be registered? 8.
section 25;
whether where the copyhold, customary, ancient demesne or leasehold house, warehouse, &c. in a borough, is in the occupation of a person by law incapacitated from voting at elections, the owner may claim registration as a county voter? 11.
as to voters in boroughs;
section 27;
whether the following are entitled to be registered?
a person, occupying two buildings, together of the annual value of 10 *l.*? 13.
a person occupying in a borough a house as tenant and land as owner, or *vice versâ*, being together but not separately of the value of 10 *l.*? 14.
an occupier of land as well as of a house, but the occupation of the one not being necessarily connected with the occupation of the other? ib.
a tenant, who is rated or assessed, but whose landlord, by arrangement with him, pays the rates or taxes? ib.
a claimant who is not rated by name, as a partner in a firm, the firm being rated? 15.
whether there is any and what limit to the period during which all the rates and taxes "to become payable" are to be paid by the claimant? ib.
whether the non-payment of rates not demanded will disqualify the claimant? ib.

REFORM ACT (English), Section 27—*continued.*
as to voters in boroughs;
whether the residence "for six calendar months" is to be most strictly construed? 16.
sections 27, 31, 32, 38;
whether the distance of seven miles is to be measured as the crow flies, or by the nearest mode of access open to the public? 17.
section 30;
whether the words, "rate for the time being," are applicable only to the half-yearly or quarterly rate immediately preceding the 31st of July, or to all the rates for 12 calendar months previously to that day, if the applicant has so long been in the occupation of the premises sought to be rated? ib.
whether all arrears of rates must in such case be paid, though incurred previously to the commencement of his occupancy? ib.
section 32;
whether the following persons are entitled to be registered?
a freeman of a borough, the charter of which entitles resident freemen only to vote, who resides beyond the ancient limits of the borough, but within the limits assigned to it by the Boundary Act? 18.
a freeman duly applying for, or actually obtaining, admission *after* four o'clock on the 31st of July? ib.
section 36;
whether loans by parish officers out of the rates, to indigent persons, constitute "parochial relief" or "alms?" ib.
whether employment of labourers at the parish works and payment to them out of the poor-rates, of wages less than the usual rate of labour, disqualify? ib. and 128. 130.
section 39;
whether under the words "personally deliver to his tenant in occupation," the service of the notice of objection on the claimant's tenant must be strictly personal on the part of the objector? 19.
whether a delivery to the wife or servant of the tenant will be good? ib.
whether notices are good which are signed by agents, using the name of their principal, or which have only the initial of the objector's Christian name, or which do not contain the place of abode of the objector? ib. 20.

REFORM ACT (Irish). See *Affidavits of Registry. Catholic Oath. Clerk of the Peace. Committee. Freehold. Freeman. Residence. Tender. Voter.*

REFORM ACT (Scotch). See *Appeal. Evidence. Freehold. Probative Deeds. Schoolmaster. Tender. Voter.*

REFRESHMENT TICKETS,
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REGISTER, of Votes. See *Committee. Evidence.*
cannot be questioned under the English Reform Act, before a Committee, if the votes have not been under the cognizance of the barrister, 51. 74. 122. 236.
may be questioned, where the barrister has decided upon a case, although the notice of objection was defective, 137. 204.
may be corrected under the Scotch Reform Act, by a Committee, by inserting the voter's description as "tenant" instead of "proprietor," 281; report of corrections made, 301.
cannot be questioned, under the Scotch Reform Act, where the voter was not objected to before the sheriff, 299.
nor where the voter, though unobjected to before the sheriff, had been rejected by him, and had been placed on the register by the Court of Review, 300.
may be questioned, under the Irish Reform Act, before a Committee, 179.
where the voter has been admitted without objection by the barrister, 308. 512.
where the voter has been admitted upon objection by the barrister, 427; *contra*, 394.
where a person has been registered by a wrong Christian name, evidence may be given that he was the person intended to be registered, 230. 261.
in England,
how corrected under the Resolution of the 11th June 1833, 301 n.
REGISTERING BARRISTER,
examined as a witness to explain the mode in which he adjudicated cases, 196.
is bound to see that the affidavit of registry signed by him is correct, and therefore an irregularity in it will not affect the voter, 398.
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REGISTRATION, of Rent-Charges, &c. with the clerk of the peace; *qu.* if still necessary, 4.
REJECTED VOTES. See *Committee. Objected Votes. Tender.*
RELATION,
that admission to freedom will have relation to the time when demand to be sworn in has been made, *argued*, 501.
RENT-CHARGE. See *Candidate. Registration.*
REPLY. See *Committee, Trial of the Cause.*
REPORTS. See *Committee.*
RESIDENCE, required in Electors for Cities and Boroughs,
in England, by 2 Will. 4, c. 45, s. 27. 31, 32, 33, 34.
in Ireland (except as to 10 *l.* householders), by 2 & 3 Will. 4, c. 88, s. 9.

RESIDENCE, required in Electors for Cities and Boroughs—*continued.*
in Scotland, by 2 & 3 Will. 4, c. 65, s. 11.
whether it should be actual, or only *bonâ fide*, 16.
that residence for six months as a freeman is necessary to give the right to vote, under the Irish Reform Act, *argued*, 318; and *semble* so decided, 334.
formerly required by law in Ireland in the mayor and other members of a corporation, but now dispensed with by the Newtown Act, 334.
of sheriffs within their counties dispensed with by 3 Geo. 1, c. 15, ss. 18. 20, *semble*, 362, note (*g*).

RESOLUTIONS, of the House of Commons. See *House of Commons.*

RETURNS,
for Ireland, under 1 Geo. 4, c. 11, s. 4, and 4 Geo. 4, c. 55, s. 71, are required to have indorsed on them a certificate by the returning officer of "the names of the candidates and the numbers who voted for each candidate, as it appeared at the final close of the poll," which certificate is "to be evidence of the truth of those facts, unless disproved;" held, that such certificate must be in the handwriting of the returning officer, or at least signed by him, 273; or the poll-books must be produced, 275; and that an indorsement by the returning officer on *the writ*, of the numbers who voted for each candidate, is not sufficient, *semble*, 374.
amended by inserting the name of another person, 57. 201. 237. 265. 268. 334.
leave given to the late sitting member to petition, 111. S. P. 2 Peck. 370.
question upon the return to be decided separately from the merits of the election, where the returning officer had cast up the tendered votes with the good votes, and thereby returned the sitting member, 109.
cases in which the House has distinguished between the return and the merits, ibid.

RETURNING OFFICER.
Duties and powers of a returning officer;
under 60 Geo. 3, and 1 Geo. 4, c. 11, s. 3, (as to counties, cities and towns), and under 4 Geo. 4, c. 55, s. 76, (as to a county of a city or of a town), is bound within 21 days after the close of the poll, to deliver all the poll-books of the election to the clerk of the peace, or officer having the custody of the records, as the case may be, verifying on oath, that the poll-books which he delivers are the original poll-books of the election, without obliteration, erasure, addition or alteration made therein since the final close of the poll; such an affidavit is sufficiently proved by evidence of the handwriting of the magistrate before whom it was sworn, 373; the affidavit need not be in writing, nor need the poll be summed up, 512.

RETURNING OFFICER—*continued.*
Duties and powers of a returning officer;
whether he is a ministerial or a judicial officer,
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his authority to examine a voter as to the continuance of his qualification, by 2 Will. 4, c. 45, s. 58, 255.
his decision, that the answer is unsatisfactory, liable to be reviewed by a Committee, 255.
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his conduct reported to the House;
for neglecting to verify the poll-books according to the provisions of the 1 Geo. 4, c. 11, and to certify, on the back of the return to the writ, the names of the candidates, and the number of votes given for each, 279.
for the want of a proper arrangement of the polling-booths, by which opportunity was given for riot, and for not taking sufficiently prompt and efficient measures to secure order during the election, 344, 345.
where he may be admitted a party. See *Committee.*
not permitted to make any preliminary observation against the counsel for the petitioner proceeding to open his case, 473 n.
where he may be admitted a witness. See *Witness*, (A).

REVISING BARRISTER,
examined with the understanding that it was by consent, and not to operate as a precedent in any future case, 247.
one revising barrister cannot be admitted to prove what was stated to him by his colleague, on the subject of a case on which he had desired his advice, 259.

RIGHT OF ELECTION,
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in the borough of Coleraine, found to be (subject to the provisions of the Irish Reform Act) in all the inhabitants of the town of Coleraine, and the jurisdiction and liberty of the same, being ad-

RIGHT OF ELECTION—*continued.*
mitted to their freedom of the said town, as burgesses of the said town, as well as in the mayor, aldermen and 24 burgesses, and in all other persons qualified under the Irish Reform Act, 502.
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SCHOOLMASTER.
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SCOT AND LOT. See *Right of Election.*
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SECONDARY EVIDENCE. See *Evidence,* (B.)
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SITTING MEMBER. See *Agency. Committee. Election. Petition.*
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who had not given the usual notice that he did not intend to defend his seat, and who had stated in the particular of his qualification, certain property which appeared to belong to another person, and who had polled at the election the votes of many persons whose freeholds were notoriously without the boundaries of the borough, declared to be disqualified, and his election to have been *vexatious*, 268; the same decision in the case of a member who had taken the qualification oath at the poll, and it appeared from the evidence, that he must have been then aware that his qualification was insufficient, 270; *semble*, that costs cannot be recovered in such a case, 271 n.
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SPEAKER,
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SPLITTING TENEMENTS, for the purpose of voting. See *Occasionality.*
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STAMPS, on admission to Freedom.
a duty of 1 *l.* only is payable on the admission of Galway freemen, under the 2 & 3 Will. 4, c. 91. 330.
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STATUTES, Directory, how they operate, 198. 361. 367. 370, 371.
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where, although a bill was dated on that day, the court in the absence of evidence, would not presume the acceptance to have been written on that day; and held, that if it had, such an act would not be within the 29 Car. 2, c. 7; ib.
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SURPLUSAGE, where it does or does not vitiate, 349; 1 Peck. 421.

SURRENDER, of a Lease, made by letter, whether it can be proved by parol, 513, note (*b*).

TENDER, of Votes. See *Claimant. Committee. Returns.*
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TENDER, of Votes—*continued.*
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TITLE, of Voters. See *Burgage Tenure. Committee. Freeholder. Trustee.*

TITLE DEEDS. See *Evidence. Witness.*

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TRUST AND POSSESSION, Oath of. See *Scotland.*

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VALUE, of Freehold. See *Freeholder* (B).

VEXATIOUS PETITIONS. See *Petitions.*
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VIRTUAL RATING, whether it is sufficient, 15.
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even where he continues to pay rent for the house he has quitted, 143.
so if registered as a 10 *l.* householder, 234.
joint tenants of a lease of lands, formerly the property of a canal company, incorporated by charter, and empowered to purchase lands by an Act of Parliament, which declared that no person should by virtue of any grant, lease, &c. made to him by the company, of any *such* lands, or of any estate or interest therein, *derived mediately or immediately under the said company*, acquire a right to vote at the election of Members of Parliament, are entitled to vote, their lease being dated subsequently to the formation of a new company out of the creditors of the old company, and the Act constituting the new company not containing the clause as to the right of voting, 186.
rejected by the sheriff and by the Court of Review, in Scotland, having described himself in his claim as "proprietor," may have his vote added to the poll by the Committee, upon proving his title as lessee for a term of 999 years, 280; or even for a term of 99 years, 291.
where his vote will be added to the poll. See *Committee. Tender.*
although the words "that I am in the actual occupation thereof," required by the form in Schedule C. No. 7, of the Irish Reform Act, have been omitted from the voter's affidavit of registry, the voter will not be affected by it, "it being the duty of the registering barrister to see that the affidavit signed by him was in the required form," 398.
how far a party, where his vote is in question, 37.
notice to him to produce his lease. See *Evidence* (B).
the contents given in evidence, under such notice, 521, 522.
his declarations and confessions given in evidence, or rejected. See *Evidence.*
where he may be called as a witness. See *Witness*, (A) (B).
See *Elector. Evidence. Occupation.*

WARRANTS. See *Witness*, (D).

WITNESS.

(A) how far a person is or is not disabled from being a witness.
in respect of interest:
returning officer complained of in the petition, admitted, 352; but having been called only to produce the poll, the counsel for the sitting members, who insisted on his right to cross-examine him generally, was charged by the Committee to bear in mind that he was substantially examining his own witness, 353; see notes to pp. 352, 353.
a voter, to support his own vote, admitted, so far as his evidence was capable of being given before the barrister, 253, 254.
not admitted as a witness to prove the tender of his own vote, 254. 263; *contra*, 2 Peck. 160; but there no objection was raised to the evidence.
a person who has subscribed to the expense of prosecuting a petition may be examined in support of it, 220; see ib. note (*f*), as to the admissibility of evidence of persons who have made wagers on the result of an election.
a person who has subscribed to the expense of defending the return, is admissible as a witness, 343.
See *Evidence*.

(B) who is or is not permitted to be a witness, or to produce written evidence;
agents, 349.
an attorney, as to things disclosed to him as such, is not admissible as a witness, 562.
counsel, 104, note (*h*), 432.
a trustee, not permitted to produce a deed without the consent of his *cestui que trust*, *argued*, 36. 38.
a voter, to prove that he had no right to vote, permitted, 103; but a caution given to him not to criminate himself, it being alleged that he had personated the party entitled to vote, 225.

(C) who are compellable or not to give evidence:
a petitioner, under the 9 Geo. 4, c. 22, s. 39, except it shall otherwise appear to the Committee that such petitioner is an interested person, 277.
a witness must answer a relevant question, though the answer may affect his title to property, 524.
a Member of Parliament who admitted that he had employed an agent for the purposes of his election who had voted for him, is not bound to state whether he paid such agent, 264.
a person under whom the voter objected to derives his title, is not bound to produce his title deeds in evidence against the voter; nor is he bound to disclose their contents, *argued*, 525.
a trustee not compelled to produce a deed, admitted in argument, 39.

WITNESS—*continued.*

a person who is summoned as a witness before a Committee is entitled to payment or tender of his expenses before he can be required to give evidence, 561; such expenses being only those necessary to enable him to appear before the Committee, all other expenses being the subject of taxation afterwards by the proper officer, 573.

(D) of the manner of compelling the attendance of witnesses, and the production of evidence:

by warrants from the Speaker, *passim.*

by summons from the chairman of the Committee, 523.

(E) of the examination of witnesses:

a witness called by the petitioners, for the purpose of producing the poll, permitted to be cross-examined generally, but *not* at the time at which he was called by the petitioners, 374; this permitted at the time, with this qualification, that the counsel was to bear in mind, that he was substantially examining his own witness, he being one of the returning officers whose conduct was one subject of complaint in the petition, 352, 353.

when a witness has been contradicted, it is not competent to the party calling him, after the defence has closed, to produce evidence in support of his testimony in a collateral matter, 562; so, a witness in a court of law who has given evidence against the interest of the party calling him, cannot be contradicted on a fact to which he has deposed, if it be immaterial to the issue, ib. note (*u*).

(F) of the exclusion of witnesses from the Committee-room during the trial.

persons summoned on either side are incapable of giving evidence, if it appear that they have been in the room during the trial, 105, note (*l*).

this rule not applicable to a case where it appeared that the party had remained in the room with the view of excluding his own testimony, 105.

the rule relaxed in favor of agents and barristers; not in favor of members of the House of Commons, 105 n; except where, after notice given that he would be called as a witness, the member has remained in the room, 523; see ib. note (*m*), as to the course pursued in courts of justice.

WORCESTER CASE (Corb. & Dan. 175).

its authority questioned in a late case at law, 334, note (*m*).

WRIT. See *Returns.*

for a second election, the first having been declared void, 96.

LONDON:
Printed by James & Luke G. Hansard & Sons,
near Lincoln's Inn Fields.

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